The Administration's Message to the Ice Industry*

By Major R. B. Paddock

Deputy Administrator NRA, Washington, D. C.

To go back over those days in which your Code was being made, the work that was necessary to put that Code into even primary shape, I doubt seriously if anyone in the room except the actual committee of yours that brought that Code to Washington will ever know the struggle, the fight, the work, the long hours necessary to get that Code into law.

I am not saying this to indicate to you that I feel or that they feel that any of us are in any sense martyrs or have in any way done anything that justice and equity and right did not demand, because we are not and we have not.

The Ice Code, in its first form, was one of the first five Codes submitted to the NRA, not the Code in the form you now know it, but a Code from one section of the country,—closely followed by five others, all ice Codes. No one of those Codes has anything similar to any of the other five except the title, and that is where the work began.

Reconciling Different Viewpoints

This Code, to begin with, had to be reconciled with all the different viewpoints, all the different requirements of ice men and the ice industry all over the United States. That was a big job. I didn't do it. Your Committee did it. All I did was sit there and help. I didn't know anything about the ice business. I don't know very much now. But I made this startling discovery: The Administrator doesn't have to know the business of this industry. And I am not saying that with the idea that it shall be flowers. Your Code as it now stands is one of the five or six largest Codes in the whole Administration. Realize—and I don't believe many of you do realize—that your industry directly affects about 1,000,000 people. Leslie Smith has sent out over 650,000 copies of your Code to ice men already. On the theory that at least 2 employees make up the average ice man's industry, you can readily see the number of people in this country who are affected directly by your Code.

It is a fair Code, gentlemen, it is one of our best. And, again, I am not saying that because it is your Code and because you are the ice men. It is a fair Code and it is a strong Code. It has been very widely copied all over the United States by numerous industries which have followed you in the mill. The provisions, the literal wording, the ideas from your Code, have become almost a model in the NRA. And I want you to be certain to realize that I am not saying that with the idea of throwing roses in this Convention, for two reasons: In the first place, I'm a damn poor shot with roses; and in the second place, you men don't need them and you wouldn't believe them if I shot them.

Interest of Industry in Code

I know that the interest of this industry in this Code is paramount. I hear it all the time. Hardly a day goes by that something in reference to the ice industry fails to come up in our office. Your Code Authority and your Committee are to me as well known as my brothers could be, and as well liked. They are direct. They are positive. They evade no issues. And neither do we. We face it as it comes in, and that is what you want. If your Code is not enforced, it is junk. If it doesn't work, it is worthless. The time and the thought and the labor and the hours expended in its compilation and final approval are just that much time wasted, if your Code cannot be enforced.

But, again, that is not the case. Your Code can be enforced. It is being enforced every day. We have had no less than five rather serious problems to face in your industry. Your Code Committee has faced every one of them on the top of the table and decided every one on the merit of the case as presented. And, after all, as long as it is right and just, what more can you ask of any law?

Realize, now, that this Code can be enforced,—but only if you want it. If you want this Code to work, work it, because then it will work. If you don't want it to work, sit by and say, "Oh, well, let George do it." And pretty soon we will run out of Georges and we will run out of Codes at the same time. If you want this law to go and to work, work it yourselves. That is the way to make it work. We can't do it for you if you don't want it done.

You have got a splendid Code, one of the best. Every word in this Code has been gone over in detail in reference to every other word. There is not a sentence in this Code that has escaped minute inspection, that hasn't been read and re-read a hundred times before it was finally put in the Code. That is done to make it sure; that is done so the interpretations will be what you, as an industry, intended, and not what I, as an Administrator, or Tom Jones, as a competing chiseler, thinks they ought to say.

Code Is Bound to Work

If you want this Code to work, work it. That is the only answer. And if you want it, we do, too; and if we get together, it is bound to go. Realize this Code is not just mere paper and ink. It is a law. It is signed by your President. It is the law of the land,—if you want it to be. And if you want this Code to work, every one of you should know what your Code says, read it, study it like your own Committee did.

Incidentally, no other industry has gone into this Code affair as has yours. You may not all know that your Regional Advisors stayed in Washington and spent weeks, WEEKS,—not just days, working on this Code, trying to misinterpret it from every possible angle,—lawyers, business men, your own Committee, to work the "bugs" out. And we think we have got the "bugs out.

A splendid job has been done. I keep on saying that because I believe it. It is a fine Code. But it will fall flat as an oyster if you don't want it to work. I lean on that especially because, to your industry and to every other, the Code has a vital meaning. It gives you, as an industry, an opportunity, with a law behind you to control the chiseling, to control the trade practices that have torn the insides out of the ice industry for the past 15 years. Now you have got the tool in your hands. Work it! That is the only answer.

There is no practice in the ice industry now that fails to come under this Code and there is no ice man in the United States who can fail to play ball under this Code and get away with it.

Opposition to Code

We have had some cases already. There is no need to go into detail. I am not going to give you the names because I don't think it is fair. I didn't come up here to read out somebody. I came here to tell you about your Code and how it works and why it works. We have had at least five examples already in opposition, and in one of these cases we have got the Department of Justice on his neck now, TODAY. And if you don't think this Code works, stick your head up above the mob and find out! That is the way to try it. Don't blame us if it fails. Don't thank us if it works. It is your law, your Code. If you want it, work it. If you don't want it, throw it out the window. But it would be a shame to waste the Code on which the thought and the labor and the talent was expended as in this one.

Read your Code. Find out what it says. It might interest you also to know that your little Yellow Book that your Code Authority and your Code Committee compiled is running into thousands of copies. We get in NRA probably 10 requests a day from all kinds of industries for copies of the Ice Code Book, not because it is ice, necessarily, but because it is right, because it is fair, and because the thought and the talent that made it up were right. Read that. Find out what your Code says. Then do it. And make everybody else in your industry do it, too. That is what you couldn't do before you had a Code.

Everybody in the ice industry, if he makes ice and sells ice, is going to play ball on these rules, and you are going to make him. I am not going to be your policeman. NRA is not going to be your private detectives. It is up to your industry. Make your own Code work. Be your own cops. You can do it. You have been itching for the chance for years, and now it is yours. Make this thing go. I can't say this too strongly: NRA is not the police force. We will back you up if you need it, but we would rather see you do it yourself. It has popular opinion; it has industrial censure; it has a lever on the chiseler among his own people. And it is just a little bit quicker. It may not be so drastic, it may not be so lasting as our penalties, but it is a lot faster and it ought to be done first.

Don't squawk to Washington every time somebody sells a cake of ice. Go after him yourself. And when you do put in the complaint to your

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Code Authority, have the dope. Don't say "I heard so and so," or "I think this,' or "Somebody said that." It is no use. We couldn't do that in your hearing; we can't do it now. We have got to have the facts. If somebody starts to tear your Code up, get after him. But get the dope, and don't fill it up with hearsay and opinion. Tell us what is going on, exactly, and tell us through your Code Authority, through your Regional Advisors.

You have an organization in addition to a Code. You have got an organization that is a peach, in just plain slang terms. It is a peach. It is made up of men personally known to me and personally known to you. You put them there. They are your people. Make them work. Make them all do it. Handle your own problems. Wash your own linen. If they tear the buttons off, we'll sew the buttons back on.

Now, on this Code violation, every law has two parts. One is the words of the law and the other is the spirit. No law that has ever been by man compiled has ever been stuck to implicitly by the same man, even. For every law that is passed, there is somebody trying to figure out how to break it. And I say that feelingly. Any lawyer will tell you the same thing. And I seriously question whether there is anybody here in the room any better than I have been on the same theory. When you get a traffic ticket, what is the first thing you do? "Oh, my God! How can I fix it?"

Now, don't start that with this Code. The spirit is written into this Code just as well as and just as plainly as the wording. Stick to it. Let's realize, all of us, what this law is for and what this Code means to this industry, if we want it to. And let's play ball under the spirit as well as the letter.

The Code Must Work

You can evade this Code if you want to. Maybe you can get away with it until somebody finds it out. The same way with every other law. But it is a darn poor way to start. If you build a house and then start taking bricks out of the foundation, one by one, pretty damn soon down comes the house. And then where are you? Don't do that. If you want this thing, use it, make it work. You can; you have got all the machinery you need, all set up, all established, actually operating, and operating doggoned well. And I am not telling you hearsay. I am in immediate touch all day long, usually three times during the day at least, with your Code Authority. Some of the problems come to us first. Some come to them. We criss-cross on the telephone all the time, any time. Hours don't make any difference. And I am not saying that to indicate that we think we are martyrs or that we want you to think your Code Authority is, either. It is not so. But we have a job to do and we are going to do the job. I can't make it any plainer.

Problems that come up now under the Code should be handled exactly as the Code says. The thought has already been given as to how to do it. The plan is worked out. The system is established, it is operating; and they are all present, all doing it.

Handle your complaints, if you have them, through your Regional Advisors and your Code Authority. Do it the way the law says,—but do it. That is the big point. Don't be afraid to try. If you think something is going wrong, get the dope and tell us. We want to know it. Make this thing work. It is a boon to the ice industry. You all know that. You have in your hands now, by law, a method, a direct means, an instrument to control your industry, to make them play ball, everybody, at the same time, on the same ball ground, and under the same rules,—and all we are is the umpire. But, don't forget, the umpire can throw a player out of the game if he starts to cheat, and that is just exactly what we are going to do.

This is a very disconnected talk. The principal reason is that I can't speak. I am not an orator. I wasn't sent there to talk, anyway, and I am not operating it that way and I hope you will excuse it now.

Increased Production Clause

There is another point in your Code that comes to mind that you ought to know about. I think it is Clause 11. It is that clause in your Code which refers to the expansion of facilities. Whether it is 11 or not, you know what I am talking about,—control of production. That clause is dynamite, absolute dynamite. Don't use it wrongly, but use it. We have had some examples of that already. I will not quote names again because I don't think it is fair to do so. We have had more than two, more than three. In detail, roughly, the situation has been this. In one case a man decides, "To hell with this Code! I'm going to build another ice plant in Squeedunk," or wherever it is. "I'll go down to Washington and I'll buffalo the Administration; I'll buffalo the Code Authority; I'll go down there and I'll tell them that this extra production capacity in this particular vicinity is necessary, that we need it, and I'll tell them that the ice men that are down there can't meet the requirements. I'll tell them that there has been a time in the summer, in the peak season, when they couldn't make enough ice to serve the community."

And that is what he did tell us, and a lot of other stuff along that line.

The result of it was this. Our office sent this man over to the Code Authority and asked them,—didn't direct them to do anything, we don't do it that way, but we asked them to hold a hearing and get the facts, which they did. The facts turned out to be about like this. Realizing that the Code was about to be signed and become a law, this particular individual proceeded to back-date some contracts, to change the names and tie on a lot of other papers, cook up a nice sounding bunch of boloney, come down there and try to saw it up in our office. The result was denied his permit to build any more ice capacity, because th makes that possible.

Decisions Based on Fact

Now, don't get the idea, however, that just because you have a that everything you think has got to be right. We have found th long ago. The decisions in this Code and in every other Code are on the facts right straight down the middle of the table, and n else. Nobody is going to slip anything over this industry until they couple of Deputy Administrators. And it doesn't make any diff who starts to slip it, it won't slide. It has got to roll square and st right down the middle of the fairway. I make you that as a p promise; I make you that as an official promise; and in the latter I Hugh S. Johnson and Franklin Delano Roosevelt.

I don't care what your politics are, severally or individually. is not a feature of NRA. And if you doubt that statement, ask a who has been there. We are non-partisan, we are non-despotic, reg of anything you have heard; we are not dogmatic nor academic. fiind all of our decisions on all the facts and nothing else but.

Realize, now, that behind you, behind your industry, you have a big law, a real law, the law of the land, the federal law. And don't think it has a punch, stick your head up!

These are not threats. I am not making them that way. I don't them taken that way. But I want you all to know, I want you all ize right now and right here that you have a Code, a good one. You Code Authority, with its subcommittees; and there is none better industry. You have an Administrator who is questionable. (Lau But you have a law behind him that would whip him in line or kic out, one or the other. And that is not meant to be "bull," either operate in NRA under very setrict, very positive rules, and we just one way and none other; your Code, your law, your industry country, your President.

City Ice and Fuel Regular Dividends

Directors of City Ice and Fuel Company have declare regular dividends of $1.62½ per share on the preferred payable December 1st to stockholders of record Nov 20th, and 50 cents per share on the Company's common payable December 30th to stockholders of record Dec 15, 1933.

Wanted—Simplified Card System

REFRIGERATION has recently had a few requests fro men for samples of a simplified card system for both and wholesale ice deliveries. Those desiring the inform want the best system that has proven practical on keep daily check on every customer. We will be grateful few samples sent to REFRIGERATION, 711-15 Glenn S. W., Atlanta, Ga., for forwarding to the interested part

Code Authority Washington Address

Permanent offices of the Ice Code Authority have been o in Room 878, National Press Building, Washington, Chairman Mount Taylor and Secretary Leslie C. Smit both located there, ready to render any possible service that the Code is operative and is enforced.

Convention Calendar

Secretaries are requested to furnish convention dates, cities and convention hotels as soon as they are selected.

Association	Date	City	Hot
National Ice	Nov., '34	San Francisco	
N. Y.-Pa.-Ohio Ice	Dec. 5-6	Erie, Pa.	Lawren
A. S. R. E.	Dec. 6-8	New York	New Yo
Missouri Ice	Dec. 12-13	Columbia	Dan. B
Iowa Ice	Jany. 16-17	Keokuk, Ia.	Iowa
Virginia Ice	Jany. 17-18	Richmond, Va.	
Illinois Ice	Jany. 23-24	Springfield, Ill.	Leland
Indiana Ice	Feby. 14-15	Indianapolis	Severin
DAIRY AND ICE CREAM			
Missouri Ice Cream	Dec. 7-8	Columbia	Tiger
N. C. Ice Cream	January	Raleigh	
Fla. Dairy Products	January	Tampa	

Code Discussions With Questions and Answers at National Ice Convention

Extracts—Mount Taylor's Address

MOUNT TAYLOR—What is this code of ours? It is nothing more an a covenant, a covenant with society and with our government. It a moral covenant and it is a legal covenant. It is a trade; it is a rgain; and, like all trades and bargains, there are two sides to it. In is covenant, we have our obligation to fulfill and we have our reward fulfilling that obligation.

Our obligation involves, first, a square deal for labor, for our employees. I notice in a great many of our discussions of the code, we are clined to overlook that feature a bit. We are naturally selfish and we looking at our part of the bargain. Well, gentlemen, don't ever rget for one moment that one of the primary parts, one of the very undation stones of this whole Code, this whole New Deal, is our obligan, or recognition of our obligation to our employees, to labor.

Another part of our obligation involves a square deal for the public, r the consumer. That is just as important as our control of produc- n or our price schedule or any other part of our Code.

And another part of this covenant is a square deal to our competitors. he complex nature of business today is such that it has become abso- tely necessary that some regulatory power be placed in operation to otect the small man in industry. That is a part of our obligation, to that our competitors get a square deal in this thing.

Obligations Under Code

And then we have another obligation under this Code. Every member the industry is under obligation to see that these three obligations I ve just enumerated are fulfilled: that is, our obligation to our em- oyees, to the public, and our competitors. It is our obligation to see at other members of the industry live up to that obligation.

That involves, first, the matter of education. It is our duty, as mem- rs of this industry, to see that every other member of the industry ows what these obligations are, that he knows what HIS obligations . It is our obligation to be patient with these men. There are at least ,000 members of the ice industry. They are in all walks of life, in strata of society, and in dealing with them, we must exercise patience. d yet, withal, we must be firm, we must see that these obligations of industry are fulfilled.

In return for that, we have our reward, we have the privilege of co- eration, of cooperative action, for which we have so long petitioned. ow many times have we heard ice men say, "If they would just give us chance, we could clean our own house? If the government would just rn us loose, we could eliminate a lot of this wasteful competitive prac- that is sapping our industry."

The government has given us that opportunity. That is one of our ncipal rewards.

Another reward is the square deal as regards competition, the square l which we give to our competitors. And the government steps in say to us, "You shall have this square deal." That is the reward the individual member of the industry. Withal, our reward amounts a stabilization of our investment.

Gentlemen, the rewards in this New Deal are well worth the price pay.

Ice Code as Model

I don't know whether you are all familiar or not with the recognition t this Code of ours has had at the hands of the government and of er industries. It has been widely sought, this so-called Gold Code, so- led because of the orange colored binding on it. No less than a score other industries have come to us seeking a copy of this Code as a del by which to build a Code for their industries. Practically every artment head of the NRA in Washington has sought and has been given opy of that Code. You will find it on the top of the desk or in the drawer of the desk of most men who are working in the government connection with the building of Codes. I think it is something we uld all be proud of.

t should be a good Code. I know of no industry that has had the peration, that has had the unselfish effort put into the building of a de that we have in this industry. You will remember we began early June and the work progressed almost continuously on this thing up il the 3rd day of October, when it was signed.

n general, this Code may be divided into five primary parts. First, we have the declaration of purpose, and that is what we might call the constitution upon which this Code is builded. There is a lot in that little paragraph, Article I of the Code, more than just an introduction. It is the key to the interpretation of practically every provision in the Code. It covers a world of ground. It means a lot. It is the foundation on which the whole Code is builded. It expresses the idea of fair dealings to all.

The second part of this Code is a covenant with labor. In a measure, that is mandatory, but it is a distinct part of the Code. It is part of the price we pay; it is part of our obligation in the bargain, and it is one of the most important, most essential features of the Code.

And after our covenant with labor, we have the rules of the game, the fair practice provisions, a set of rules laid out and backed up by the federal government, by which we are to play this game.

After that we have a description of the administrative machinery set up for administering this code.

And then the governor to regulate the industry, the Control of Production provisions.

I think of those provisions sometimes, when I get to thinking about them, I think of the old steam engines that were first built without any governor. As they developed and became more powerful, it became necessary to put a governor on them; and as those engines were developed still more, still greater refinements placed in them, still greater power placed in them, one of the big problems in the design of those engines and turbines became that of designing a governor to regulate them safely.

Just so with our industry. In its infancy, when it was young, we didn't need so much governor. Today, our industry has become so large, so powerful, that it is absolutely necessary that some governor be placed upon it to keep it from running away. And our control of production provisions constitute that governor.

Extracts—Col. Weatherred's Talk

COL. P. A. WEATHERRED—We have entered into a great contract with our government and we must carry out our part of that contract, to put more people to work at fairer wages.

Presently, we will be making reports that will disclose whether the ice industry is doing its part in this great program. If we are found complying with our code and contributing our part to the general scheme, that will be well for both ourselves and for our Code. If some are found not complying with the Code, that will be bad for them. And if we are found complying with the Code, the letter of it probably, but still not contributing our share to the general plan, that may some day be too bad for the very fair labor provisions that we now find in the Code.

Now, this contract is not one-sided. The President meant what he said when he said that the government proposes to go into a fair partnership with the well-intentioned men of all industries. The government says to industry, "You do your part and I will do mine; and my part will be to grant to you a charter through which you may establish business practices, with my assistance, business practices that will offer you stability and peace such as has never before marked your industry." The government says to the men of industry, "I will not devitalize you by eliminating competition, but I will help you make competition fairer."

I think with that declaration, the "shot of mercy" was given to the dying theory of cut-throat competition. I think it ended the theory of business law that the business man may shoot his gun in any direction he pleases and, if he kills his neighbor, it is his neighbor's fault and not his own. I think it brought down business laws to the civilized concept that a man may shoot his gun in any direction he pleases so long as he does not hit his neighbor, his neighbor's ox, his neighbor's ass or his neighbor's wife.

A Good Trade All Around

When the government tendered us this promise of assistance to a better day in business, to a higher plane of competition; when the government promised us this vision of industrial peace and wrote that vision into the other provisions of the Ice Code; we accepted, and wisely so, the labor provisions of the Code. And it was a good trade. It is a good Code. If its plan is not perfect—and it is not, but if it will work reasonably well, if it will enable us to come together and isolate the chiseler and reduce his power for evil, if it will cut in half the broken ice markets that disgrace this country every season, we will have made a wonderful trade.

The ice war in San Antonio last season cost that market and surrounding markets upwards of $600,000.00. Now, $600,000.00 is approximately half the cost, the additional cost, that the entire Texas ice industry will incur in 1934 in complying with the labor provisions of the Code of fair competition for the ice industry.

Purposes of Code

The purposes of the Code are declared to be:

"To remove obstructions to commerce."

Now, get that! To remove obstructions to commerce. And they mean all of them that they can possibly remove.

"To promote the organization of industry for the purpose of cooperation among trade groups.

"To secure cooperation between management and labor.

"To eliminate unfair competitive practices.

"To secure fullest possible utilization of present production capacity."

That is to give industries a chance to catch up before adding to their surpluses, the surpluses under which many of them, including our own, break time after time.

"To avoid undue restriction of production except as may be temporarily required.

"To increase consumption of industrial and agricultural products.

"To improve standards of labor.

"To relieve unemployment.

"To rehabilitate industry and conserve the natural resources."

Those are the declared great purposes of the Act out of which our Code grows.

To accomplish the purposes of the Act, the President is empowered to use any administrative agencies, Federal or voluntary, that may be at his hands, to approve codes of fair competition for industries and, when these Codes are approved, for them to become the law applicable to the respective industries; and providing that violations of the Codes of fair competition are violations of the Federal Trade Commission Act and they are also punishable by fine and subject to restraint by injunction.

The Act recognizes associations to be the agencies through which it will be administered but requires that these associations be truly representative of their respective groups.

It requires that every code shall carry the mandatory provisions giving labor a right to organize and to speak through its selected agencies. It provides that the President may lay down such rules and regulations in carrying out the Act and its purposes as may, in his opinion, be necessary and advisable; and it provides a $500.00 fine and a jail sentence for a violation of those regulations.

Now, the Act, as emergency legislation, is going to be upheld by the courts. We are not going into a legal discussion of that point here. Let's leave those discussions to the lawyers and to the courts. But every court that has spoken, and several of them have spoken so far, has upheld the Recovery Act. My personal opinion is that there is not the least doubt that the Act and all of its provisions is going to be upheld. This emergency legislation is the way our government has taken to save itself. The right of self-preservation is just as firmly fixed for governments as it is for the men who make up government.

Definitions Added to Code

Two definitions, three, in fact, have been added in the Code, which will be spoken of when we begin to talk about prices. Those are the definitions of "Wholesale," "Commercial" and Domestic" ice.

Another definition that is causing considerable concern over the country is that of the effective date of the Code. The definition reads: "The term 'Effective Date' means the second Monday following approval of this Code by the President." Now, there have been some troublesome questions arising under that definition. What was the effective date of the fair practice provisions of the Code? What is the effective date of the control of production provisions? Does this expression here, "Effective Date," mean that this is the effective date of the entire Code or is it a definition of a term meaning that wherever it appears in the Code, the words "Effective Date" means the second Monday after the signature of the President, but that in all provisions of the Code where it does not appear, then the effective date of that particular provision will be October 3rd, the date of the signature by the President?

Those points are at present under debate. Personally, I am very much inclined to accept the interpretation that October 3rd is the effective date of this Code in all provisions where the effective date is not specifically referred to. We will talk more about that later, especially under the control of production provisions.

MR. TAYLOR—The labor provisions of the Code are generally thought of as being a one-sided affair in that they are all for the benefit of labor. That isn't quite true. We in the industry have some protection in the very provisions that were written for the protection of labor. The very fact that your competitor must mantain a fair level of wages for his employees, that he cannot resort to sweat shop methods, is a protection for you who do not and will not stoop to such methods. The labor provisions in that respect are a protection to the square-minded dealer against the chiseler, the unprincipled chiseler, who would resort to sweat shop wage provisions.

The primary purpose of these three articles in the code dealing with labor and hours is to shorten the hours of labor, to improve the standards of living of labor, to put more men to work, to increase the earning of labor, and in that way increase the purchasing power of the upon which our business must depend.

Three Labor Provisions

There are three labor divisions or three articles of the Code that be classed as labor provisions. The first is Article IV, which is com spoken of as the mandatory provision. Those are the provisions tha labor the right to organize, that give labor the same right that yo I, as members of this industry, are enjoying under the leadership o government, the right to organize for our own protection; and this gives labor the right to organize for its protection.

There have been, as you know, a number of attempts to writ this mandatory provision certain interpretations, which attempts have consistently refused by President Roosevelt. So the provisions as w into your code under Article IV are practically the exact wording o Act itself. No attempt need be made to interpret it further. language is very clear. It means just what it says. I think any minded man will have no difficulty in interpreting that provision attitude towards labor is fair.

Three Classes of Employees

You will notice that there are three classes of employees set out this code. You have first the office and clerical. They come in a se class. They have separate hours. Their conditions of employmen separate and apart from any others.

Then you have those exercising supervisory functions, or execu You have the owners and stockholders. They come under that same

And then you have "all others," and "all others" means just wh says; it means all employees not office or clerical or those exercising s visory functions or in executive capacities.

Now, let's take these up in the order of those three classes. Offic clerical employees cannot be worked over 40 hours a week and they c be worked over 8 hours a day at any time, under any conditions. I care what the emergency is, what the conditions are, an office emp or clerical employee cannot be worked over 8 hours in any day nor than 40 hours in any week. They are in a separate class by themsel

Executives and supervisors are unlimited so far as hours are conc as long as they are performing the work of an executive or the wo a supervisor. Owners and stockholders, of course, come in the class. In other words, a man who is performing supervisory work functions of a supervisor or manager, may work as many hours chooses in any day or week so long as he is not performing the fun of labor. But no man, no manager, no executive, no supervisor, is mitted to engage in the work of labor for a number of hours in of those prescribed for labor. A manager of a plant, an owner plant, may work just as long as he wants to as manager of the exercising supervisory functions, but he cannot work at pulling i waiting on trade or delivering ice or performing the work of a cle the office or any of those things for a number of hours in excess of prescribed for those particular classes of employees. He may do he may work eight hours in the office and then eight more hours exer his supervisory functions, performing the work of a manager, but he not work more than eight hours in the office as long as he is strictly clerical work. And he can't work more than fifty-six ho week in the engine room or on the tank or on the platform or o wagon performing the functions of labor.

Third Class—All Others

The third class, as I told you before, includes all others. I don't how many times I have been asked the question, both orally and wr how many hundreds of letters in our files at Washington have co asking, "Are a night watchman's hours confined to 56 hours per w There isn't but one answer to that. You have three classes of ployees: you have office and clerical, you have supervisory or exec and you have all others, and all others means just what it says. A watchman must come in that classification of "all others," or any employee who doesn't come in any one of the other two classes.

Now, then, just a word about the restrictions for supervisors. was a tough problem when we tried to write it into the Code, to the work of a supervisor and to write it into the Code so that advantage could not be taken of it, and at the same time to word that the legitimate supervisor in an operation would be left free to form the functions of a supervisor.

The restrictions thrown about a supervisor are, first, that his pri job must be that of exercising the supervision of work of others, s vising the work of others.

Another requirement is that that man must be paid a certain a certain minimum wage that is in excess of the minimum for ord labor. He cannot be paid less than $25.00 a week in the South no than $30.00 a week in the North.

Another is that he must have continuous, year-round employ You cannot have a man as a supervisor during the summer and the him off when winter time comes. That type of man that you naturally put in at the position of supervisor is not the type of that you lay off in the winter time, any way. You cannot class a m a supervisor who is a part-year employee.

And then you have the question as to the maximum number that you an class as supervisors. That phraseology is a little bit difficult to understand. It simply means this, that in an operation where there are four r more employees, you can have one supervisor for every seven employees n that operation. If there are less than four employees in this operation, hen you are not entitled to a supervisor. You are entitled, of course, o a manager. But here is the situation: in a plant with three employees, f you permitted a supervisor there, you would have one manager and one upervisor and one employee. It would be rather far-fetched to construe hat man's functions as those of a supervisor when you had two men upervising the work of one employee.

If you have four or more—in other words, if you have four employees, ou are allowed one supervisor in addition to your manager. If there are ix other employees, you are allowed two supervisors. In other words, hose two supervisors and your six other employees would make that total umber eight. When you get past seven, you can add another supervisor. If you have as many as twelve other employees, you are allowed hree supervisors, and so on—one supervisor for every seven employees, cluding the supervisor, or every multiple thereof.

There is another restriction in this Code in reference to employment on uly 15th. "—provided, further, that where the weekly hours of work ere less than the maximum on July 15, 1933, such hours shall in no ase be increased." That simply means this, that if you were working our men on a certain job less than 56 hours a week last July 15, you ouldn't put that man back to work on a greater number of hours per eek after you went under the Code than he was working on the week f July 15. The purpose and the aim there is to prevent an employer rom trying to recoup some of his losses, so to speak, under the code by oing back and increasing the hours above what they were last July 15.

Restrictions as to 56 Hours

Of course, I think we all understand the restrictions there as to 56 ours. The average number of hours over the year must be 48. The aximum, that is, for what we call the "all other" class of employees, our drivers, your tank men, your dock men, your vault men, and men of hat type, night watchmen included, for those men the hours are not estricted so far as the day is concerned; you can work a man 24 hours a one day if it is agreeable to him and agreeable to you; but you cannot ork him more than 56 hours in any week, regardless of what the conditions are. You may work him 12 hours a day for 4 days if conditions arrant. You may even work him 14 hours a day. But you cannot o that every day in the week. You must not exceed 56 hours in any eek. And for every week that you work a man 56 hours, there must be corresponding week at some time during the year when you work him nly 40 hours. It takes that to bring your average to 48. Or you may ork him 54 hours one week and then make up for that by working him 2 hours in some other week.

There has been some misunderstanding regarding the period of the ear when you can work 56 hours. In the original draft of the code, hat provision was written in there in such a way that you could work a an 56 hours during the six summer months and only 40 hours during he six winter months. That feature of the old code has been eliminated. ou may work a man 56 hours a week in January if you want to, or arch, or July, or September. You can work him 56 hours whenever onditions in your business require it, provided that you keep the average of that man's hours per week over the twelve months' period down 48. You do not have to give him 48 hours a week employment. You on't have to work a man 56 hours in any week. You don't have to ork him 40 hours in any week. But you must not work him above 6 hours in any week or above 48 hours averaged over the year.

Employees in More Than One Industry

The code further provides that where an employee is engaged in more an one industry, he must not exceed the hours—I don't mean in more an one industry, but where he is working for more than one employer, must not exceed the maximum hours prescribed in this Code and he ust not be permitted to exceed those hours. In other words, a man in't work 30 hours a week for you and work 30 hours a week for me other ice manufacturer. He would be working 60 hours a week d would be violating the Code, and both of you would be violating the de if you permitted that.

Now, in some industries, in some businesses, in fact, a great many ice erations involve two or more industries, ice and coal, for example, or e and oil. In those set-ups it is desirable to keep the men classified under e or the other industry so far as possible. It is recognized, of course, at this is not always possible and in such cases and such conditions, the de under which the employee spends the major portion of his time ould govern that man's hours; or the code in which the restrictions are eatest should govern. In other words, if the Coal Code permitted him work only 48 and he was doing both, he would have to be confined to hours per week, to the Code with the greatest restrictions.

We have the same combination sometimes in a plant, a combination ice or clerical and plant employee. The Administrator's interpretation that is that the class of work to which that employee devotes the major rtion of his time should govern his hours. In other words, if he puts more time in the office than he does on the platform, then he should classed as an office employee, or vice versa.

Questions and Answers Conducted by Mount Taylor

QUESTION—What are the labor requirements in towns of 2,500 population or less, in view of Executive Order, dated October 21, 1933?

ANSWER—That was the order in regard to the Retail Code. The provisions of the Retail Code have no bearing whatever on the Ice Industry Code. Every member of the ice industry is under every provision of the Ice Code regardless of the size of his town or the number of employees he has engaged. That Executive Order has no bearing whatever, has no effect whatever upon the Ice Code. This is just one of about 500 questions on this same thing that I have had. Apparently, every man in a town of 2,500 in the United States thought that that provision applied to him. A direct order from the Department states that that provision has nothing to do with the Ice Code.

QUESTION—If on July 15 you were paying a man an hourly rate of 22½ cents, or $2.25 for 10 hours, can his wage be adjusted to 23 cents an hour on an 8-hour basis?

ANSWER—That, gentlemen, is a question that should go over into wages, the matter of wages, that he is talking about here. I am going to ask Col. Weatherred to handle that part of Jim Mahoney's program and I will save that for him. That involves wages.

Natural Ice Harvest

QUESTION—On a natural ice harvest, when the employment covers three weeks and the number of men employed is 50, are you allowed supervisors?

ANSWER—You are. The number of supervisors you have or may so class may be based on your period of maximum employment. However, remember this, that every man you designate as a supervisor must be paid the minimum wage prescribed for supervisors, $25.00 in the South and $30.00 in the North, and he must be given continuous, year-round employment. That doesn't mean that you cannot fire a supervisor for just cause, but it does mean that you cannot just turn him off because work gets slack.

QUESTION—In a plant operation of seven men, can assistant engineer, if paid the necessary wages, be considered as supervisors, provided he does not pull ice or assist in the storage room but his duties are confined to operating his plant?

ANSWER—That, ~~Paul,~~ is a question that is on the borderline situation. If that man exercises no supervisory functions, if he doesn't supervise the work of others at all, then he is engaged in performing the functions of labor. Now, supervising an engine is not a supervising employee.

MR. HOFF—I am talking about the puller and the tank man and the storage man.

MR. TAYLOR—If he is supervising the work of plant operator, of tank men, storage men, then he may be classed as a supervisor, provided the other requirements are met for salary and year-round employment. But he must be exercising supervisory functions at some stage of the game.

Supervisory Employees

QUESTION—Define operation in the restrictions of supervisory employees. Is each plant in a group considered one operation?

ANSWER—By that, I presume the writer means the number of men in any one operation as determining the number of supervisors allowed. My thought on that is that the operations should be confined normally to the number of employees in a particular plant. There might, under certain conditions, be some exceptions there; where there are a group of plants and where all the employees in that closely located group were being directly supervised by one central office in that particular city, then the whole group might be considered as one operation. But if the supervision of these various plants is spread out over the various plants themselves, then it seems to me that you will have to confine your supervisors to the number of employees for each particular plant in that particular plant operation.

QUESTION—Where a company conducts business at various locations, is the qualification for supervisors to be considered for each location separately or en masse for the whole business?

ANSWER—That is the same question, virtually, that I have just discussed. The separate method would seem proper in view of possible smaller individual competitors adjacent to each location. I think I have said all that I have to say on that. If you have a certain group of operations that are closely knit together in one city and are virtually under one local management, then I think you might have supervisors for that whole group in that particular city, based on the total number of employees in that group. But for your chain operations, where you have plants scattered in different towns, in all fairness to the competitors in those towns, it seems to me that you would have to confine the number of supervisors in each place to the employees in that place.

QUESTION—Can a summer routeman work 56 hours every week for four, five or six months?

ANSWER—He can if the year-round routemen doing the same class of work that he is are working 56 hours during those weeks. In other words, a part-year employee may be worked this same number of hours per week that the year-round employees are worked who are doing the same character of work. You have two routes out here, we will say, one of them manned by a part-time employee, a man who works only three months out of the year, we will say, or four months, and you have some other routes that are being manned by year-round employees. The hours which the year-round employees are putting in on their routes will determine the number of hours that your part-time man may be worked in the same week.

QUESTION—An auditor of a corporation, receiving a salary of $200.00 per month, has no supervision over any employees but is responsible for the general books of the corporation. Can he be classed as a supervisor?

ANSWER—If that man is not responsible in any way for the work of any other employees, you cannot class him as a supervisor. Now, if he exercices some supervisory functions over bookkeepers, if he has some authority to tell other employees what to do and how to do it, then I think you can class him as a supervisor; but otherwise I know of no provision under the code that would allow you to class that man as a supervisor.

QUESTION—We have a car-icing plant and car-icing docks which operate only six months in each year. There are 15 regular employees and from ten to thirty extra men. Are we permitted to have supervisors while the plant is in operation? When the plant is shut down, the employees are released, as there is no work for them.

ANSWER—If you don't give them continuous, year-round employment, you cannot call them supervisors. I'm sorry. That is one case where it possibly will work out to a disadvantage.

"Two Weeks With Pay"

QUESTION—In figuring weekly average hours per year, in the case of two weeks' vacation with pay, shall 52 or 50 weeks be used to divide into the total annual hours?

ANSWER—Our thought on that has been this, that if a man is given vacation with pay, his time can be figured as going on at no hours per week in computing your yearly average. If you put him on vacation without pay, of course, you cannot figure it that way. In other words, if he is given two weeks' vacation with pay, you could figure his average on the basis of the number of hours he put in, over 52 weeks.

QUESTION—When is the employee considered as working?

ANSWER—Now, you will have to use your own judgment. Seriously, it would be my thought that when a man goes on the job and starts to perform his duties, he is employed then until he comes off duty.

Now, it is our thought that under certain conditions in which it isn't shown plainly as an intent to evade the purposes of the code, a man's shift may be split, that a man may work four hours in the morning and four in the afternoon and take out four hours in the middle of the day.

Co. Weatherred's Interpretations

COL. WEATHERRED—Now, then, except for the executives and supervisors, the wage basis under the Code, so far as the code is concerned in the ice industry, from this time forward is on a rate of pay per hour, regardless of whether the employee is paid by the week, the day or the month. There is no minimum weekly wage required except in the case of supervisors. That change is somewhat radical in our thinking, but in the application of the code it is necessary that we get that idea into our minds, that from this time forward the rate of pay, the basis of pay in the ice industry, except for supervisors, is per hour. And no employee can be reduced below the hourly rate at which that employee was paid on July 15, 1933, regardless of whether such employee was being paid by the hour, the day, or the week. In determining what was the hourly rate of pay on July 15, 1933, of an employee who, on that date, was working for a base wage plus a commission, only the base wage need be considered. The provision against payment of an hourly wage at a rate lower than that existing on July 15, 1933, applies to the individual employee and not to the job.

That question is frequently asked, as to what is the basis there. It is the wage that the man was receiving on July 15, per hour. For the week immediately prior to July 15, if he were a full-time employee and he worked 72 hours during the week and received $24.00 for the week, 72 into 24 will give you the rate of pay upon which you will base it and which you will use as a guide to determine whether or not you are above or below the July 15th restriction.

Equitable Adjustment

Now, equitable adjustment calls for a lot of discussion, did under the President's re-employment agreement and it is doing so under this permanent Code. As nearly as we can define the idea in a few words, it is simply this, that the employees who are paid the higher wages, those that we think of as in the higher brackets, can be called upon to stand reasonable reduction in total compensation and thereby join with company in helping put somebody else to work. Their compensation that is more permanent employment, shorter hours, and a general tion that men in that position under the recovery program, and as gins to work, will find that many who have heretofore been depe upon them are receiving work and they are benefiting from the ge development, the general improvement. The men in the higher bra can be called upon to share some small part of the cost of the pro

Mr. Richberg pointed out the two cases, you will remember one employee who was slightly reduced as to hours and his wage, his of pay, remained the same or was slightly reduced, and that would be table. The other was the case where a man had probably been wo 60 hours a week and was reduced to 40, that the company could n expected to pay as much for a total of 40 hours' work as it did fo

Now, that is the case of the man in the higher brackets, and the eral principle is laid down that where the companies are complying the program and they are dealing fairly with their organizations, pl the game with the Code and with the government, that, until the trary is shown, they will be presumed to be dealing fairly with their ployees.

It is a ticklish question. Your good sense must come to your resc this thing. You mustn't be reducing your key men too much. You break up your organization if you do, you will bring discredit upon company and upon the industry. On the other hand, it is but fair the better paid men in the organizations, when their hours are great duced, shall bear some, shall make some small contribution to the g program along with the company.

Employees on Commission

Now, employees on commission has been the subject of a lot of d sion and there has been a certain type of lawyer thinking about it good many tricks resorted to in other industries to place the em on the commission basis in order to avoid the terms of the Code.

Now, employees whose compensation is made up of a base wage commission, and employees whose compensation is a commission w guaranteed minimum, must be guaranteed compensation not less tha minimum wage per hour prescribed in the Code. Should there be p in the arrangement any understanding or guarantee of a minimum pensation per week, or for other period, the employee must be pai less than the prescribed minimum wage per hour.

I think that is probably carried, the statements I am reading he your little white pamphlet that you probably all have. It is carried so-called Gold Book, or Orange Book, or The Book probably will b best expression for it.

That expression simply means that if there is any commission ar ment and anything in the way of a guarantee, an understanding, jus tween ourselves or otherwise, that "If you don't make quite what think you should, I will pay you at least this much, off the record" such arrangement as that brings a man into the category of those must be paid the minimum wage. If he is wholly on commission, on commission, he is limited as to hours but he doesn't come unde provisions as to the minimum wages.

Now, employees that are wholly on commission must be that must be wholly on commission; there must be no subterfuge abo there must be no guarantee. Otherwise, they must be paid at lea minimum wage or their earnings must be the equivalent of the mi wage. What their commissions will lack in earning the minimum must be made up by the company if there is any understanding o guarantee or any provision whatever for a fixed pay plus the co sion basis.

Wages in Effect on July 15

Now, then, employees who on July 15, 1933, were employed salary or wage basis, may be changed to a commission basis, but such cases such employees must be guaranteed a minimum equal t hourly wage that they were receiving on July 15, 1933, or the mi provided in the code, whichever may be the greater. This restricti course, does not apply to new employees employed solely upon a mission basis.

That is written in there in the interpretations. It is not in th but in the interpretations, which are the code so far as all practica poses are concerned. That is to prevent changing over to a com basis to avoid the minimum wage requirements.

Now, then, here is this question that Mount said came under my I don't know whether he really thought it came under my he whether it was just one he couldn't answer:

"If on July 15 you were paying a man an hourly rate of 22½ or $2.25 for ten hours' work, can his wage be adjusted to 23 cen hour on an 8-hour basis?"

Now, then, on July 15 he was earning 22½ cents. I presum is a Southern question. The question is, if on July 15 you were pa man an hourly rate of pay of 22½ cents, or $2.25 for 10 hours, c wage be adjusted to 23 cents per hour on an 8-hour basis?

If that is in the South, the answer is yes.

Wage Provision Questions

MR. OSTERMUELLER—In connection with that last answer, isn't that just a little contradictory to the previous statement about the employees in the lower salary brackets? If this man was getting 22½ cents an hour for a 10-hour day, he had a $2.25 income. Now, if you give him only 8 hours' work at 23 cents an hour, his income has been reduced considerably.

MR. WEATHERRED—The basis of pay is by the hour, Frank, and not by the day or by the week.

MR. OSTERMUELLER—You have reduced his daily income from $2.25 to $1.84.

QUESTION—I would like to ask if an employer may convert his peddlers to a 100% commission basis, put them on his payroll on the commission basis only, with no minimum guarantee?

MR. WEATHERRED—Yes.

As I understand your question, Frank, you are bringing up a question of equitable adjustment.

MR. OSTERMUELLER—That was the point I was bringing up. It wasn't my question.

COL. WEATHERRED—Well, the point involved is that this man is close to the minimum wage. I wouldn't call him as being among the higher brackets. He is paid by the hour. Your July 15th restriction is by the hour. Let's get that clearly in our minds.

QUESTION—Where it has been the established custom for years that payment to ice drivers was on commission, companies furnishing all wagons, trucks, etc., what shall these men's classification be?

ANSWER—I presume that means wholly on commission. I don't think the furnishing of the wagons and trucks has anything to do with it. If they are wholly on commission, as long as there is not some provision in the arrangement by which they are given some guaranteed minimum, they are not affected by the minimum wage provisions.

Ice for Re-sale

QUESTION—Does the fact that a retail merchant in a town of approximately 600 is handling ice for resale throw the entire payroll of his store under the hours and wages of the Ice Code because he is handling ice?

It applies only to his ice operations. Some peddlers own stores or meat markets and serve their routes in the morning while the family handles the store.

QUESTION—Can this man handle a store upon returning from his route for the balance of the day?

ANSWER—Yes. He mustn't work in the ice business, but that is his store and he is running it.

QUESTION—Employees above the minimum wage group received on July 15th 40 cents per hour for 48 hours, equaling $19.20 per week. Will reducing the hours to 36 and increasing the hourly wage to 45 cents be an equitable readjustment?

ANSWER—Well, let's do some figuring there. It is the inclination on our part and on the part of all others who are interested in this equitable adjustment thing not to tie ourselves down to figures. What do you think is equitable? Your man is there; you know what he is earning; you know what he is worth; you know something, probably, of his responsibilities and what he is worth to your organization as an organization. Now, naturally, those factors enter into the matter from your point of view. Now, on July 15th he was receiving 40 cents per hour for 48 hours, equaling. $19.20. Will reducing the hours to 36 and increasing his hourly wage to 45 cents be an equitable readjustment? That would be $16.20 as compared to $19.20. Oh, I would say it is pretty close to it.

MR. NEUMER (Mattoon, Ill.)—We operated all summer and we only needed 6 ice men, but we used 7 because we operated or worked only 48 hours; we had 3 engineers and 3 firemen and the chief engineer, and the seventh man who fired one shift and ran the engine one shift. We came along to the fall of the year, when we had to shut down this machine and we kept shutting down until we didn't need any more firemen. We still have the chief engineer and we had the seventh engineer and one other engineer and fireman. Well, we had a little hard luck, one of them got out on the railroad track and the train killed him. That left 6. Then we had one sort of unreliable fellow, so we cut down to 5 engineers; you might say they are engineers, or they are firemen; they do their own engineering and their own firing also and they work only 36 hours a week. The chief engineer still works 48 hours; he comes on Sundays and is there off and on throughout the week. Now, everybody told me I was violating the Code, so I told them I was going to come here and find out.

COL. WEATHERRED—Not at all, sir.

QUESTION—A man who works under "all other" classification makes 48 hours' time for 7 days per week on a straight 6 months' period, earning 23 cents per hour, or $12.88 per week. Then, when he begins to work five and a fraction hours per day, 7 days per week, what will his pay be in dollars and cents per week during the latter six months' period?

ANSWER—The question involved here is whether, as I catch it now—and sometimes these questions are pretty hard to interpret right here because we are on the spot and under fire and all, but if I catch this question, it is whether or not you have the right to reduce a man's weekly pay in proportion to the reduction in his weekly hours when the off-season comes along. The answer is Yes. You are paying him by the hour and when you pay him and comply with the code as to what his hourly wage shall be, why, you are complying with it whether he works six hours or one hour during the day. His total weekly compensation has nothing to do with it. This is under the "all other" classification, now; that is not the supervisors.

Commissions Without Guarantees

QUESTION—Can a delivery man be paid on a commission basis, with no guarantee?

ANSWER—The Code says the commission method is for sales work only. Can a delivery man be paid on a commission basis, with no minimum guarantee? The answer is Yes.

MR. CALDWELL—If you raise a man for the off-season six months, then when he goes back the next season on an 8-hour day, does that higher wage still apply? You cannot cut them down and raise them, can you?

COL. WEATHERRED—It is figured on the hourly basis, John. If you don't work the men enough in the winter time to pay them a living wage, then do it.

MR. CALDWELL—Well, I am perfectly willing to pay them a living wage, but what I want to know is, when summer time comes back, do I have to maintain that hourly rate during the coming summer?

COL. WEATHERRED—You do.

MR. CALDWELL—Let's see about that. He gives this man some consideration and has an understanding with him that it is a consideration in order that he may live during the winter months; but just because he sets a higher hourly schedule during the off-season, when he goes back to the summer schedule as to hours, when the man's income is normally sufficient, it doesn't mean that he has to maintain that higher schedule just because he has had an equitable adjustment with the man, does it?

Higher Wages in Winter

COL. WEATHERRED—I understand what you mean now. I didn't get John Harding's question. Now, your question is this. In order to give this man a living wage, you are paying him more during the winter months than the minimum wage per hour. Now, the question is, are you tied to that higher wage per hour that you have paid him in the winter time, when the summer comes on and you give him more work? You are not. Your minimum in the code applies. Does that answer it, John?

MR. CALDWELL—I have run against that several times.

COL. WEATHERRED—"Could drivers employed on an hourly basis be discharged and others be employed on a strictly commission basis?"

Strictly speaking, the answer is yes, but as a matter of practice, you would better look out. It raises a question as to whether or not you are engaging in subterfuge.

MR. CALDWELL—In the case of most any man who did do that, wouldn't the implication be that he was?

COL. WEATHERRED—Probably so, Mr. Caldwell. If not, it just doesn't smell good or look good. But according to the strict letter of the code, you can employ a new man on the commission basis. We will put the case this way. Suppose you have had a man you have discharged for cause and you decide to put the man on that route on a commission basis, the man you discharged having been on a salary basis. Now, you can do that. And if you could do it for one, you could do it for two. If you could do it for two, you could do it for several. But if you decide to do it for several and employ a lot of new men and turn over to the commission basis, you are bringing down a lot of suspicion; and you would better not bring in any of the old men in that list of those who are brought back on a commission basis.

Peddlers to Commission Men

J. C. THOMPSON—One of our competitors has conceived the idea of putting his peddlers on a commission basis. His delivered prices are $10.00 for retail ice and $7.00 on commercial ice. He has developed the idea of putting his peddlers on this commission plan at 50% of the sales price of the ice. I want to ask two questions. First, is that a subterfuge? And second, will he have to pay those men a minimum of 23 cents an hour?

COL. WEATHERRED—Judy, I don't see anything in the Code to keep a man from changing his peddlers to a commission basis. The peddler is a dealer; he is an independent dealer; he is a member of the industry; he comes under the peddler status and it is an entirely different basis from either the commission or the wage basis. I see nothing to prevent a change-over in the case of the peddler to the straight commission basis. I don't think it is a subterfuge. It is a new man on the commission basis, a man who has been in business for himself. I think you will treat him the same way as if he had not been in the ice business. I can't see any other way.

MR. CALDWELL—Do you consider a man living literally under this Code if purposely he lets go his old help who have been with him for years on the wage scale and, in order to get out of paying this wage scale, he puts them all under the commission basis? Do you believe he is living under the letter of this Code, as to the intent and purpose?

COL. WEATHERRED—He is not living under the intent and purposes of the Code. We were talking about the letter of the Code and there, probably so, because he does have the right to change over. But as I said a while ago, I think I did say all I could say on it, that it is a suspicious procedure and not in harmony with what we are trying to do.

QUESTION—If the volume on a retail route during the winter doesn't warrant paying the drivers a minimum wage for the 30 hours per week necessary to serve the route, can this driver be put on commission, with no guarantee? Suppose this were purely a summer time route?

ANSWER—Now, if the man was working on a wage basis on July 15, you couldn't do that without paying him the minimum: you couldn't shift him over to that commission basis. If he was not so working on July 15th, you could make the shift.

MR. JAKOWICZ—In our case, we are paying so much an hour. Our competitors advise us that they are going to the peddler system and I see, according to your interpretation, they can go on the peddler system and we will be no better off than we were before. We were in hopes that they couldn't change over to the peddler system.

COL. WEATHERRED—There is no law against the peddler system any more than there is against the commission system or the wage basis. I don't think it would have been a smart thing to do to set up a Code here prohibiting putting any routes on the peddler basis any more than prohibiting putting them on a commission basis or a wage basis. It wouldn't have stood up if we had done it.

WALTER COXE—Colonel, you said on the commission basis they were limited as to hours. How about the sale of refrigerators, a man working selling refrigerators, a specialty salesman? How about the delivery man who has been trained to sell refrigerators at night, after his working hours?

Selling Refrigerators Is Not Selling Ice

COL. WEATHERRED—Selling refrigerators is not selling ice. If he is actually selling refrigerators, let him do that. The more time he spends on that, the better. But let's be sure he is selling refrigerators.

MR. CALDWELL—It would better not be one of the requirements for him to hold his job during the day, though, had it?

COL. WEATHERRED—No, I think not.

MR. EDOURD—I have in mind a peddler that we took over last spring. He was in another man's territory. He went ahead and played along until fall, when he couldn't make any more money, and he quit. Will we be compelled to sell him this next year?

COL. WEATHERRED—You will not. Gentlemen, you have the right to sell still. Let's get that point perfectly clear: I am glad you brought it up. It is not directly under this head but it is a good point. The thought is in the minds of some of our people that because they quote a peddler price, they have to sell to every peddler who comes along. You don't have to do it and, as a matter of fact, if you are a good ice man, you won't do it until you are sure he is complying with your code. You don't have to sell your ice to anybody you don't wish to. You can cut off all the red-headed women in your market if you want to and refuse to sell them ice.

COL. WEATHERRED—We come to the acts of Unfair Competition, Article IX of the Code. These declarations contained in this Article are first to be considered as the basis upon which the well-intentioned men of this industry will conduct their affairs and their dealings with their competitors from this time forward. It is a charter giving us permission to do that. I will first start with the Unfair Practice provisions, which are the declarations of intent of fair dealing upon which the men of this industry who are whole-heartedly joining hands with our President in this program meet and come together upon their ideals of fair competition.

Under the direction of the Attorney General of the United States, the violator is subject to restraint by injunction proceedings brought by the United States District Attorney. That is the backing of the Unfair Practice provisions of your Code.

But let me say again, let's accept them as a basis for voluntary and patriotic effort on our part to support the Code by complying strictly with the Unfair Practice provisions. It is a Code of sound business practice.

Prices

Now, there are two or three classes into which these provisions fall. The first has to do with prices. They strike at the price abuses, rebates, discrimination as between customers of the same class, commercial bribery, selling ice at a different price from that carried in posted schedules, and establishing a price without posting it.

I think that we will find that some one or more provisions of the Code, without going into detail, will cover any form of foxy business as far as prices are concerned. One of the provisions is that ice shall not be sold below cost; and the cost, the items of cost, are set out. It is declared that our cost accounting methods must be according to accepted practices within the industry: The Code Authority has the power to call upon any member of the industry to make a report upon his cost accounting methods, if it should desire to do so. It is not contemplated that the Code Authority will attempt to lay down a uniform cost accounting system for the ice industry. The question of whether or not your books, as to cost, are being properly kept will come into issue whenever a complaint is filed against you by a competitor to the effect that you are selling below cost. When that occurs, the Code Authority or the Adiministrator, acting through the Code Authority, has the power to call for a showdown so far as your cost accounting methods are concerned.

Guarantees

There is a provision in the code that declares against guarantees against advances and protection against declines in prices. That raises some pretty fine questions. We will deal with those in detail when we get to talking about the pricing methods, which I will handle tomorrow morning. That provision hits primarily at the pernicious practice of commitments. Those of us who have officiated in the adjustment of ice market troubles have habitually had to listen at the last minute to some fellow coming in and saying, "Well all right, that price schedule is all right, but I have some commitments here, some promises that I have out, and I have got to comply with them." And frequently there are more commitments, especially in the commercial field, than there are without.

Now, that kind of practice has no business in this scheme of things, where all customers of the same class must be treated alike, where discrimination is frowned upon; in fact, prohibited. And so we must not tie ourselves up to some kind of an arrangement by which, should we change our prices to a class of customers, we cannot change the price to all customers within that class, whether that change be up or down.

Another interesting part of the Unfair Practice chapter is that of anti-dumping—Section (1), or clause (1), or No. (1) on the list of Unfair Methods of competition. Probably some of our Committees of Arbitration and Appeal and maybe the Code Authority may be thinking there may as well have been an (h) before that (l). However, I don't mean to be facetious about that part of this Code. It strikes at probably the most destructive and frequently the most vicious form of competition, unfair competition, and we have tried to draw it so it would cover them.

Surplus Ice

Stated in simple terms, the inequity sought to be relieved by the anti-dumping provisions is that of the dumping of surplus ice into a market other than that upon which the producer depends for his base income. The key word is "Surplus." I think we know what we are hitting at. There are a lot of borderline questions that could be raised and there are going to be some cases that will be rather difficult to decide. There are going to be some of them that probably we shall decide erroneously. But the obvious cases, well within the line, without question as to violation, if we can control those, these provisions will be most helpful in the general stabilization scheme.

Now, there are certain examples of the surplus that we are talking about, as given in this book, such as ice produced from a creamery, packing house, cold storage plant or brewery after the uses are served for which the ice tanks were installed and are primarily operated. Get that idea of "surplus" all the way through this thing, and if you do that, you will not have a lot of difficulty in applying the anti-dumping provisions to most of the cases that will arise. The creamery, the brewery, the packing house that has installed its tanks and its refrigerating machinery for use in connection with its business, finds that it has some surplus capacity, or surplus ice on its hands. That ice has been paid for, or practically paid for, in the value the plant has received from that refrigerating machinery and those tanks serving their primary use. Now this surplus, after that use has been served, moving out into the market against any competition there is and ruining the ice operations of the commercial or the domestic market is the surplus that is struck at and is sought to be controlled by the anti-dumping provisions.

Another example is the surplus remaining in storage or produced from excess capacity after the demands have been met for car icing by a plant built and primarily operated for that purpose. The same reasoning applied in the former case, of course, applies to this. Those examples were given just to help you to understand what we are talking about. You have got the basic use there, the basic market, the normal market out of which the operation pays for itself and makes its money normally, and after it has done that, it will have a surplus that it wishes to move into competition; and when it does, it comes under the anti-dumping provisions.

Surplus from Excessive Capacity

Surplus produced from excess capacity or remaining in storage after a plant located in a certain and definite market or territory has met the demands of its normal market. A plant located in a large city, sells its ice in that market, finds that it has some ice in storage which is surplus capacity. There is a little market situated some miles distant and it is a pretty easy thing to take some of this surplus ice—it costs very little to produce it, to step up a little bit and make a few additional turns on a plant that is not running to full capacity, and go out into the other fellow's market and invade it during the summer time with any old kind of delivery equipment, under-sell the other fellow, sell at prices that will ruin him, because he has to maintain the service the year 'round and carry his investment, but, at the same time, they will be prices which will be profitable to the invader.

Now, then, this surplus ice from the brewery, the creamery, the car icing plant, the plant located in the distant market, can be sold in any market or anywhere the anti-dumping provisions do not prohibit the sale of that surplus ice. They simply require that if it is sold, it must be sold in compliance with four restrictions that are laid down and, so long as compliance is had with those four, all four of those restrictions, the ice can be sold.

The first restriction, then, in a few words, is that this surplus ice cannot be used to invade a market and cut the prices prevailing in that market.

The second restriction is:

(2) Such ice cannot be sold below the average cost of production and distribution of all ice produced, sold or distributed by the producer or sell, plus the cost of transportation to the points of ultimate sale or delivery.

That means simply that this surplus ice must bear its share of the cost of the entire operation. The man cannot be allowed to say that "My cost for that ice that I am using to invade the other fellow's market with is simply the cost of a little additional ammonia and a little additional power and the little water that it takes to make this additional ice," but that ice must bear its share of the cost of the entire operation.

The third restriction is:

(3) Such ice cannot be sold for lower prices than those being secured by the producer or seller in his normal or basic market.

In other words, he can't hold up the prices in his own market and take his ice into the other fellow's market and sell it at a lower price than that which he is getting in his own market. That is the very essence of the anti-dumping provisions that are carried into other codes. It is the same thing that our own government is striking at when it prohibits a foreign country from dumping its surpluses into our country at prices lower than those surpluses, the same products, are being sold for in the country of their origin.

The fourth restriction is:

(4) Such ice must be sold under the same service conditions as to off-season sales and as to protection of customers through proper storage as are established by any of the ice producers, dealers or distributors in competition with whom such ice is designed to be placed.

That is striking at the practice of taking this surplus ice, invading the other fellow's market during the summer season, taking off the cream, doing it through any kind of a rattletrap truck or with a peddler and an ox cart, and then, when the first Norther blows, the invader blows with it and leaves the invaded market to be served during the losing winter months by the man permanently located in that market. This restriction means that when that market is invaded by the surplus ice, if any of the competitors in the market are giving year 'round service, the invader must give year 'round service. If the ice in that market is being sold from refrigerated stations or plants, refrigeration must be used to preserve it in the invaded market.

Those are the four restrictions that were thrown about this surplus ice and, as I say, they do not prohibit the sale of surplus ice; they simply require that these four restrictions shall be complied with if it is sold.

A Special Provision

A provision is carried under this Article that is not carried anywhere else in the Code. We tried to get it in but at the last minute they ruled it out except for this provision. We had in the Code as originally drawn, a clause to the effect that a manufacturer who, after notice that a peddler or dealer to whom he is selling is violating the Code, if the manufacturer continues to sell such dealer, the manufacturer as well as the dealer would be guilty of violation. I hope one day we can get that back in there but it is not there now. It is a pretty serious question, even so, the position that the manufacturer is in who continues to sell to a peddler whom he knows is using his ice to violate the Code and the program. But that is aside from what we are talking about.

In this provision we have this statement:

"The sale of ice by a producer or dealer with the knowledge that such ice is purchased with the intention of reselling the same in violation of the terms and provisions herein is an unfair trade practice, the same as if the seller of such ice had engaged in an unlawful sale direct or through his employed agents."

The provision is so important to the general plan that we fought to retain that provision in the Code—we didn't have to fight very hard; when we explained it, they saw it—to prevent evasions of this provision by shifting the responsibility to the shoulders of an irresponsible peddler.

The determination of what constitutes "normal market, use, channel or territory" shall be made by the Code Authority, with the approval of the Administrator.

In other words, these cases will be determined on their merits as they arise. Aside from the definitions and the explanations that are given you here, we do not attempt to lay down hard and fast rules that this ice is surplus or that this character of transaction is in violation of the dumping provisions. The procedure will be to get the facts when complaint is filed, to give both sides an opportunity for a hearing, study the points that are given here and others like them. In that procedure, the book suggests getting the answers to such questions as this:

Pertinent Questions

For what purpose was the plant built?

That is in determining whether or not this is such surplus ice as is struck at by these provisions.

What is the primary use to which the ice manufactured by it is placed?

What market has the plant been serving?

Would the plant continue ot operate if it were cut off from the sales in controversy?

What is the distance between the plant and the invaded market?

Do other markets lie between the plant and the invaded market?

Could the invaded market fairly have been considered part of the normal outlet at the time the invader's plant was built?

Was there need for or reasonable prospect for profitable movement of the ice into the invaded market when the invader's plant was built?

Have there been any transactions between the parties to the controversy that will be helpful in determining what has been considered the normal market of the alleged invader?

Now, those questions, of course, are just examples of the character of inquiry to make to determine whether or not the ice is really surplus ice moving from a plant that is primarily designed and used for some other than the general commercial business or from some other market to which the plant should be restricted as its basic and normal market.

Now, then, gentlemen, very hastily I have given you a review of the Unfair Practice provisions of your Code. They are subject, of course, to interpretation. But let's keep in mind this, in asking your questions, that these cases of violation all take on somewhat different forms for the most part. Let's don't worry about abstract or borderline or academic cases. Let's accept the provisions in the spirit in which they are intended, to be used as a basis for cleaning up this ice industry, these practices that have for so long been so costly to it. They are to be taken quite as seriously as the labor provisions or any other provisions of the Code. Their observance will mean the saving to this industry of many millions of dollars. Some have estimated that compliance with that Code will mean a saving of forty million dollars a year to the ice industry of this country. I don't know what basis was used in making that calculation; I don't know whether it is anything more than a wild guess; but any guess that is a good guess has to be pretty high when we think that 5 cents a hundred means a dollar a ton and, in a market of 100,000 tons, that is $100,000.

Questions and Answers

QUESTION—Under Instruction 4, you talk about "service conditions" and "proper storage." What I would like to ask is, what does that do with regard to the hothouse and the summer peddler, the sunshine peddler?

COL. WEATHERRED: You refer to the fellow who comes in the market during the summer time and leaves in the winter?

MEMBER—Exactly.

COL. WEATHERRED—It stops that.

QUESTION—Well, does this make the manufacturer stop it? That is coming up in our own city. That is the excuse I am using.

COL. WEATHERRED—If this is surplus ice that is invading somebody's market—

QUESTION—We are using this Code to do away with hothouses and also with the sunshine peddler. Now, are we justified or not?

COL. WEATHERRED—That is for you and your competitors to establish a policy on. The Code doesn't establish a policy for you; it doesn't condemn hothouses or summer peddlers, but it doesn't prohibit you and your competitors from condemning them.

MR. DUGGAN—What does he mean by "hothouses?"

COL. WEATHERRED—He wants to know, as I understand it, whether or not the Code prohibits the placing within the market of jitney stations and hothouses and unrefrigerated stations.

MR. DUGGAN—Doghouses!

COL. WEATHERRED—Yes, they deserve almost anything you call them.

QUESTION—In Section 2, sub-section (e), what is going to be done about the standardization of the size of blocks? Will 300-pound cans be considered standard?

ANSWER—The Code doesn't undertake to standardize blocks but it does say that ice must be sold according to weight and not according to bars or blocks or cakes, and that your overweights must not be more than 5 per cent.

QUESTION—If a plant was primarily built as an ice plant and then added a cold storage plant and an ice cream plant to this operation, how would the plant be considered under the Code?

ANSWER—The fact that the plant had been in the market as an ice plant, of course, would be considered. It would not be cut off from its ice business simply because it also went into the ice cream business, or would not be restricted. However, if by going into this ice cream business and into the cold storage business, it decided it would use its capacity in connection with that business and it goes on and does that and the whole operation then becomes one where the old ice plant is used primarily as an aid and as a part of the ice cream business or the cold storage operation, and then it is found that it has some surplus ice after those uses are filled, the fact that it had been an ice plant before doesn't make it still an ice plant now, primarily. It is primarily an ice cream plant or a cold storage operation. But from the fact that it was in the ice business, the question there, as I see it, would be, "What did it do when it changed over? Did it change into primarily a plant to be used in connection with the ice cream business or with that cold storage operation? If it did, then its surplus ice is surplus.

Dumping Ice Through Peddlers

QUESTION—An ice company started dumping ice into our city last summer through a peddler. They have given the peddler a two-year

contract at a price which is less than the price to their local peddlers, less than the lowest published schedule of wholesale ice in our city, and less than the cost of the ice. Can the company continue to dump this ice during the remaining life of the contract? Must they publish this contract price?

ANSWER—Contracts that have been made, bona fide contracts that have been engaged in and are in force, have been entered into and are enforceable, not just these memoranda of what the ice man is going to have to do if the peddler stays with him—if it is a serious contract, an enforceable contract, it cannot be abrogated. We cannot abrogate contracts; they will have to be carried out, because it was a lawful contract when it was made. And the same reasoning shoots through the whole thing, as we will see in our discussion tomorrow or our pricing policies. I wish it were different, but it is not. That is law; that is the Constitution.

But let me get this to you perfectly clearly. Just remember this, that in this case, if I were involved in it, I would have my Committee of Arbitration and Appeal develop all the facts in connection with it and I would give those contracts a good looking over. There is not one out of ten of them that is really a contract.

QUESTION—Does that price have to be published?

COL. WEATHERRED—The contracts that were in existence when the code went into effect do not have to be published.

QUESTION—Do they have to be filed?

COL. WEATHERRED—They don't have to be filed, if they were good faith contracts existing on the date on which the Code became effective. There is no good purpose for it; we don't have any control over it; it is a vested interest.

QUESTION—Does that apply to a verbal contract?

COL. WEATHERRED—Well, it would if they were really contracts. But look out! They are probably just commitments.

Over-Weights

QUESTION—I agree that there should be a limit on over-weights, but how was 5 per cent arrived at, and why? Although many old plants cannot do better, does that make it right?

ANSWER—Well, I don't know. There were a lot of ice men sitting around when that 5 per cent was determined; there were 104 of them there; that was written in Chicago at a conference of 104 ice men. If I remember correctly, a man from Texas was the one who suggested 5 per cent; and he was probably thinking that 5 per cent on a 300-pound block brings it to 315 pounds, and that is about what you usually make. I am not sure that it is, but that is what I was told. I don't know much about the manufacturing side of the business.

MR. DUGGAN—Does that mean before or after scoring?

COL. WEATHERRED—Well, Frank, if you are selling your customer 50 pounds of ice, it must not weigh over 52½ pounds when it reaches her.

QUESTION—A competitor's peddler is serving a certain territory during the summer and discontinues during the winter. Another peddler serves this territory the year 'round. According to the Code, the competitor's peddler cannot resume his activities in this territory the following year. Is the competitor allowed to send a new peddler into this territory each summer, thereby defeating the purpose of the Code? In this manner, he is enabled to get a nice slice of the profitable business in the summer without the resultant loss in the winter.

ANSWER—Now, the whole thing gets back to the question, is that ice moving as surplus ice? Is it ice that comes under the anti-dumping restrictions? You understand what I mean, don't you? If it is a plant over here that is moving that ice out of its normal market, we will say, then this course of conduct is prohibited. But if that field is part of the normal market of that plant from which it is being called, it is not prohibited. Get your question always in your mind in these anti-dumping problems. Is it surplus ice? Is this fellow using his surplus ice to invade this market? Is he getting outside of his normal, basic use, his normal, basic market?

Selling Competitor's Customer

QUESTION—Is it unfair competition to sell a competitor's customer, dealer or peddler on a credit basis who you are able to obtain as a customer on account of your competitor's finding it advisable to put his customer on a cash basis?

ANSWER—Rebates are prohibited. Just how long the fellow can go without paying for his ice before he is not paying for it at all and before he is being rebated, is a question I don't think I would undertake to answer. But this ice must be paid for and be paid for promptly. Otherwise, one is subject to being pretty close to a violation or being in violation. However, there is no prohibition in the Code against selling ice to commercial, or wholesale or domestic customers, for that matter, on credit.

QUESTION—What is to prevent anyone from claiming that they have long-term contracts in force?

ANSWER—Well, it is simply this, that as a part of the enforcement machinery, any time that the Administrator approves it, or, for that matter, I think that the Code Authority should determine that a report upon existing contracts should be called for, they can be called for; and then it will be up to the fellow who says he has them to prove that they are existing contracts.

Now, they didn't go into these things. We talked about it a whole lot. We are not going to have a lot of people prying around looking at your books and all that kind of business, but when an issue arises and the administrator wants to know anything about your transactions, about your contracts, about your cost accounting methods, he is going to call on you for it—and you are going to give it to him.

The rest of this question is: —"and from claiming contracts signed for building new plants?" Well, we are going to get into that interesting topic tomorrow. We are going to talk about these existing contracts for the building of new ice plants. So I am going to reserve my answer, if the one asking me the question will agree.

QUESTION—Can the Code Authority ask for the date of the contract?

COL. WEATHERRED—Yes, sir, the Code Authority can ask for the contract itself.

QUESTION—A plant sells ice to a peddler who hauls ice 30 miles into a town that has two ice plants. The peddler calls his operation an ice company in the invaded city different from the producing plant. Is the producing company in any way responsible?

Again, the question is, if that is outside that producing company's normal, basic market, if that is surplus ice that peddler is hauling in there in violation of the four restrictions of the Code, then the producing company is liable.

MR. CALDWELL—That is all I want to know!

COL. WEATHERRED—If a plant sells one man using 1,000 tons of ice and another using 2,000 tons of ice, can he name two prices simply because of the difference in amount?

He can.

QUESTION—In a case where a manufacturer in a town whose domestic price is 60 cents sells to a dealer who takes his ice into another town where there is a plant whose domestic price is 50 cents, does the dealer have to maintain the 60-cent price prevailing in the town where the ice is produced or does he set his own price?

ANSWER—Again, if he is dumping that ice, if he is DUMPING THAT ICE, he has to comply with the price in the market into which it is being sold. He cannot sell it at lower than the lowest published price in the invaded market and he must not sell it at less than the price that it is being sold in his own market.

QUESTION—An ice cream manufacturer and milk dealer built in our locality some five or six years ago a new plant and installed an eight to ten-ton ice unit, primarily for use in icing cases and selling ice to dairymen calling at his platform. He had excess ice on hand and soon began to sell two or three tons of ice to peddlers. He now has six to eight tons in excess of his requirements, which tonnage is sold to peddlers at a lower price than that which we sell to peddlers. Does this ice cream dealer, which is his principal business, come under the anti-dumping provisions of Article IX and should his prices be governed by those charged by the regular ice manufacturers?

The statement of the case, on its face, makes out a case in violation of the anti-dumping provisions and subject to the restrictions. However, there is one invariable rule that we must all follow in handling these cases and that is that there are two sides to every question and you haven't gotten your case until you have heard both sides.

Re-Organize S. C. Ice Association

On October 25th the ice manufacturers and ice dealers of South Carolina met at the Jefferson Hotel, Columbia, S. C., and reorganized the South Carolina Ice Manufacturers to operate as the unit association under the Code for the Industry.

The following officers were elected:

President

O. Lee Gordon—Columbia

Vice-President

Douglas Moses—Hartsville

Secretary-Treasurer

C. Y. Reamer—Columbia

Directors

Walter Dobbins—Greenville
J. B. Mahoney—Charleston
W. A. Lewis—Florence
Henry Duckett—Greenwood
J. N. Lipscomb—Gaffney
L. W. Brown—Anderson
C. A. Church—Rock Hill

Board of Arbitration and Appeal

C. G. Timberlake, chairman—Hartsville
O. Lee Gordon, secretary—Columbia
E. H. Moses—Sumter
A. L. Lewis—Greenville
R. H. Jennings, Jr.—Orangeburg
Sumter DeVaga—Charleston
Henry Duckett—Greenwood

Thursday's Session

Pricing, Posting of Price Schedules and Control of Production

COL. WEATHERRED—Men of the ice industry: The first impulse I have on taking up the subject of Pricing Policies under the Code is to tell you something of what the policy is not. And the first thing under the negative head that I wish to say is this: It is not a price fixing policy. Price fixing so far is out, out of all the codes except a few dealing with natural resources. We discussed the price fixing policy at great length when we were in Washington working on this Code. Some of our people were of the opinion that the Code would be practically useless without some character of price fixing provision. But the government came back and said, "No, we are not going into a price fixing policy in these codes." It might have said to us, "We have drunk at that creek." Look at the difficulties that have surrounded the fixing of prices of the utilities and of the railroads, the suits under the XIV Amendment; in some cases the devitalizing of the industry itself; abuses that have grown from it; almost insoluble questions that arise when a committee or a commission or a court or the President says that, for ice or for shoes, "You will get this much, no more and no less."

At the same time, it was realized that without price stabilization, the recovery program could not be carried forward.

Open Price Agreement

Now, then, we turned to the plan that is commonly known as the Open Price Arrangement. It has been used before, and quite effectively, in some industries, and we expect it to be far more effectively used when, as now, it has the backing of the federal law. Now, it does not provide that the Committee of Arbitration and Appeal, that the Regional Advisor, the Code Authority, or the President, can say what you will get for your ice, or can disapprove your price schedules as they are filed, so long as they are in form and comply with the requirements as to form. It does not carry any provision that 90% or 10% or 1%, ½ or ¾ of the men in the market can fix a price at which the other men in the market must sell their ice there.

Now, when you heard that minimum prices were not going to be permitted to be fixed in your Code, some of you may have been disappointed. At the opening hearing, those of us appearing before the Administrator stated that we accepted and supported this open price arrangement but that we reserved the right, should the administration at some time change its policy and provide for the fixing of minimum prices, that we would be permitted to come forward with a request for an amendment to our Code that would be in compliance with the administration's policy.

So far, there is no indication whatever of any weakening on the administration's part on this price fixing business. It is simply not being done, and the indications are that it is not going to be done.

In the Retail Code, it carried a provision for an allowance of 10 per cent, or some percentage to be fixed by their Code Authority, above invoice prices to cover labor, and that sales below that price will be sales below cost.

No Selling Below Cost

Well, now, you have that provision in your Code, that you cannot sell below cost. That Retail Code arrangement is not price fixing; it is simply cost determination, and the prohibition that, when it is determined after the fashion that is prescribed, the sales must not be made below the prices thus determined.

I noted a report the other day that there was some kind of a price fixing arrangement in the Dyers' and Cleaners' Code. I don't know how authentic the report was. Dyeing and Cleaning is labor and it has long been the policy of most of our state governments and of the federal government to permit labor to fix the prices collectively at which it will sell its services. So don't take that Cleaners' and Dyers' Code, if it does carry a price fixing provision, as any precedent for a provision that might later be carried in your Code permitting you or your Committee or somebody to say at what price ice shall be sold.

Now, don't be too quick in concluding that you really do want a price fixing arrangement in your Code. As troublesome as it is and as irksome as the situation is going to be at times when some fellow persists in posting a lower price than what should really probably be the market price but still above cost and still, therefore, safe from the point of view of violation of the Code—so unsatisfactory as that is going to be, think twice before you make up your mind that you really do want in the scheme of things in this ice industry somebody to say at what price you are going to sell your product.

We have got to keep this thing in mind all the time. I am not arguing on one side or the other; I am just throwing out a word of caution. You know, you can get things too nicely fixed up. They can be so well fixed up that we get to thinking they are automatic and we devitalize the industry, cut off incentive for improvement of service and machinery, plant facilities, and for whatnot. We get the attitude that we have a charter or a right to existence, regardless of what we may contribute ourselves, if the law says we are entitled to so much and we must have it. The price fixing policy, as I say, I am not arguing against it, and if the time comes when they should change and say that industries are going to be in some fashion or other permitted, at least to set the minimum prices at which their products shall be sold, we will study the thing out as we have studied out this entire Code; every one of you will have an opportunity to express himself; but, gentlemen, there are a lot of things to be thought about before you make up your minds that you want a price fixing policy in this Code. In fact, I am going to suggest that you stay off of any such conclusion, because you don't have it, the prospects are that you can't get it, and we musn't have any mental or emotional disloyalty to this Code. We have got to get behind it and make it work.

Now, then, the pricing policy that you have in this Code has a lot of merit. It is going to improve immensely old methods in this industry. I have told you something of what it doesn't do. Now, what does it do?

What Pricing Policy Does

First, it requires a man to come out in the open, to declare himself, to publish to his trade and publish to his competition the prices at which he is going to sell ice under every classification within which he does sell ice. He ties himself down to that schedule by filing it with his Committee of Arbitration and Appeal and filing it with the Code Authority in Washington, with a statement and a pledge that he will comply with that schedule. It requires that he treat everybody alike within the same classification; that he conduct his pricing policies without rebate, without discrimination, without commercial bribery, and without the various other types of price trickery that have long dogged our efforts to stabilize this ice industry. It requires that he comply with that schedule until he changes it; and it doesn't permit him to get mad in the heat of anger and, in retaliation, change over night. He must give 15 days' notice to his Committee of Arbitration and Appeal before he can change that schedule, and to the Code Authority in Washington. Now, 15 days is a pretty nice cooling off time. A lot of things can be done in 15 days when you have the prospect of lowered prices in your market.

I believe that a certain market is going to be held at a reasonably profitable basis, in lieu of a basis that is barely profitable, if at all, by that very provision.

We had a telegraphic request the other day in Washington that exceptions be made permitting certain manufacturers in a certain market immediately to meet reduced peddler prices because a fellow in the market had posted the lower price and they wanted to meet it. Naturally, we did the only thing we could do; we telegraphed back: "Comply with the Code and comply with the law. If you want to change your schedules to meet the new price, this price this man is making, give notice of it; give 15 days' notice." The 15 days are not up, but everybody in that market is working hard so that when the 15 days do roll around, the prices will stay where they are and the other fellow will be on the line.

Posting Schedules

Now, then, I think that you are acquainted with the technique or the technicalities of posting these schedules. They are to be required to be posted at points of sale, and those are the platforms off of which the ice is sold, or the delivery equipment off of which it is sold. At each such point of sale all the classifications must be posted covering the ice that is sold off that point of sale. If a wagon is selling both to the commercial and to the domestic trade, the commercial and the domestic prices must be carried on the wagon. If he is selling only to the commercial trade, the domestic prices need not be carried.

We have been very greatly pleased with the manner in which most of these prices have been posted over the country. It is a detail but it is an important one. Those price cards on those wagons and trucks and on the platforms should be kept fresh, businesslike looking. They should be changed frequently enough to keep everybody reminded that the thing is working and that it is serious. Now, there have been a great many of them posted on just ordinary cardboard. Inside of another week or two, on many pieces of equipment and probably on some platforms around over the country, we are going to see faded, torn and washed out price schedules.

Avoid Faded-Looking Price Sheets

Don't let that happen. Keep them fresh there. Somebody might conclude that you are going about this thing in a faded, washed out fashion if that evidence of your compliance is not fresh and effective, large enough to be read, businesslike looking. Now, we have dressed up this thing of filing and posting these schedules a bit to impress everyone with their importance. We think all of us, the largest and the smallest of us, will be in a pretty solemn frame of mind when we sign the certificate or the pledge that is carried on the posted price schedule and on the filed schedules, and that those schedules filed with the Code Authority in Washington and with the Committee of Arbitration and Appeal, in addition to being necessary to the policing of the plan, we think that it is good psychology to have laid those requirements around this thing and made some ceremony out of it, and we are pleased to note that it is being carried out in that spirit in most instances, that the thing is being taken seriously and gone about in a very businesslike frame of mind on the part of those who are administering it.

Now, I must move along and touch just some of the high places; and under these subjects, we are somewhat behind with our time and if there is some important item that I have overlooked and you would like to bring it out with your questions, we will have a little time for questions when we close.

The filing of your schedule is to be carried out under the forms that are given. I think that you probably all have information as to what

those forms are, that is, as to what the filed schedule should carry—the company and the market that is to be served, the Committee of Arbitration and Appeal with which it is filed, and then all of your prices must fall within one of three classifications.

Now, we have changed our terminology considerably in adopting these classifications. We felt that was necessary to give uniformity to this thing, although this terminology changes some of the practices that prevail in the different sections of the country.

WHOLESALE ice is all ice that is sold for resale—ALL ICE that is sold for RESALE. The wholesale classification must not include drug stores, restaurants, etc., although in many sections of the country we speak of the wholesale business as drug stores, restaurants, etc. The wholesale classification now has the technical meaning of ice sold for resale and, in drawing up your classifications, of course, you must carry under the wholesale classification all of the ice that is sold for resale.

Classifications in Price-Schedules

Now, I don't suppose any of you have the idea that you will have only one classification under Wholesale, that is, one price, or under Commercial; for that matter, under Domestic. There can be variations, subclassifications under these major classifications, as many as are justified.

Commercial includes all ice sales to purchasers who use ice in connection with their business, and under that Commercial head fall drug stores, restaurants and all that class of trade in which the ice is used in connection with business enterprise.

DOMESTIC is the ice sold to the family trade.

Now, I am not going into a detailed discussion of the form on which you should file these schedules. In the different Unit Associations, as indicated by Mr. Davis of the New England Association this morning, they are working out their own forms on that. But remember this, that when you give notice of a change in schedule, you must carry the entire new schedule, both the prices that have been changed and those that remain unchanged, because in the offices of the Committees of Arbitration and Appeal and the Code Authority in Washington we wish simply, when we receive an amended schedule, to take the old sheet out, throw it away, and substitute the new. We don't want to have to be digging through half a dozen papers to find out what you are really selling ice for or are supposed to be selling it for according to your filed and posted schedule. So when you make a change, be sure to file your complete schedule as though it were an original filing, so that whatever old schedules we may have in the office can be thrown away.

Now, of course, your schedules, these filed schedules, must cover all the classifications under which you propose to sell ice in your market, and it is against the Code to sell ice that is not covered by a posted and filed schedule.

No Classification on Quality Alone

The Code Authority rules that no classification shall be based on quality alone. The Golden Book uses the language: "That is, no filed or posted schedule shall contain a classification based solely upon, for example, 'white ice.' This ruling doesn't prohibit a classification that takes into consideration the fact that the purchasers thereunder may accept ice of under standard quality. For example, the price made to dairies may take into consideration that dairies will accept white or under standard ice. However, once the dairy classification is posted, the price called for thereunder must be charged to all dairymen on all occasions without any discount because on some occasion such purchaser may accept under standard ice."

There is just not any "white ice' classification. Your classification is according to weights and your conditions of service and, when that is once posted, that must be the price, whether the ice be white or whether it be clear.

The prices must be based upon weight and not upon "blocks" or "bars" or "cakes." That is the classification, the differentiation.

"Contract Ice" is an admissible classification, provided it is properly described and all the customers that comply with the provisions are given the same treatment.

Uniform Classifications

Now, we suggest that in the various markets the classifications be uniform; that is, these classifications, these descriptive phrases, the breakdowns, Commercial—taking 300 pounds or more, or whatever it may be, that the men in the markets, the competitive markets, work out uniform schedules, uniform classifications.

Now, that is not a suggestion that you make uniform prices. That is between you and your competition. You know what you will do but, then, it is not written in the book. (Laughter) But we do say to you to come together and define these classifications. And, of course, while you are there, if each fellow wants to tell what he is going to get for his ice, why that is fine.

Now, the Committees of Arbitration and Appeal are given a lot of latitude in making suggestions as to the size cards and all of that that will be carried out in their territory to help carry this thing along in a businesslike fashion.

Now, the producers and manufacturers have a greater responsibility in this matter of filing and posting price schedules than is literally called for under the Code. With the approval of the Administrator—now, this has the same effect as if it were written into the Code.

The Act and the Code authorize the Administrator to call upon you for such reports as may be necessary to effectuate the policies of the Code and of this Act. Now, this is a formal requirement, carried in this book of interpretations of your Code, that the manufacturers and producers file with their Committees of Arbitration and Appeal a list of all the dealers, peddlers, station operators and whatnot that they serve. That is not just left up to you. You will be in violation of the Code and of the requirements of the Administration if you refuse to turn in that list.

Furnishing Dealer-List

Now, the list, that list of dealers, doesn't have to be sent to Washington. It is sent to your Committee of Arbitration and Appeal.

In addition to that, the manufacturers are called upon, not required, not directed or ordered, but as a matter of cooperation with the Administration, the manufacturers are called upon to pass on to the dealers and the peddlers served by them instructions received from the Committee of Arbitration and Appeal; to distribute to their dealers and peddlers such forms as may be helpful in securing a compliance with the filing and posting requirements and, in general, to aid and instruct their dealers and peddlers in carrying out the requirements as to posting, filing, and compliance with price schedules. The manufacturers and producers are also requested to report to the Committee of Arbitration and Appeal all dealers or peddlers whom they know to be selling ice in violation of any of the provisions of the Code.

Now, that touches upon the responsibility of the manufacturer toward the Code and the Administration for the conduct of his peddlers and dealers. That kind of comes to mind when we are talking on this occasion. Except for the anti-dumping provisions of the Code, there is no responsibility fixed in the Code upon the part of the manufacturer and the producer for violations of the Code by the peddlers whom he serves. As I said to you yesterday, we attempted to get that into the Code, but it was ruled out. However, don't feel too safe about that. I just want to throw out to you a word of caution on it. It is entirely possible that you, by selling continuously and helpfully, probably, in certain respects, to dealers and peddlers who violate the Code, show their disrespect for it, that you may find yourself in the position of a conspirator with that peddler or that dealer by furnishing him ice with which to violate the Code and the law. So don't feel too safe when you are selling ice to peddlers. If your Committee of Arbitration and Appeal repeatedly calls your attention to this peddler and that who is being sold by your plant and who is out taking your ice and violating this Code, the time has got to arrive somewhere when you have got to take your stand: "Are you going to help the Code or are you not? Are you with it or are you against it?" And if you are against it, are you in conspiracy by letting your ice go out to be used to violate the Code? I am a little bit beside the point but it is probably pretty well to have that spoken into this record.

Change of Prices

Now, change of prices, as you know, is to be made only upon 15 days' notice to both your Committee of Arbitration and Appeal and to the Code Authority. Any change of price; a change in definition of customers that will shift one or more customers from one classification to another is a change in the sense that is meant here and cannot be brought about until after 15 days' notice. In other words, the Code means what it says when it says that you must comply with your price schedules, and you must comply with them without subterfuge. Posting a commercial price, for example, of 40 cents a hundred delivered to commercial users taking 300 pounds of ice per delivery or more, and then changing that to commercial users taking 200 pounds per delivery or more, leaving the 40-cent price there, is a change of price, is a change of schedule, a change of definition. That calls for the filing of a new schedule.

Don't take any liberties with these schedules. Comply with them and help everybody else with whom you come in contact to comply with them. An addition of a new classification to your price schedule is a change of schedule.

Now, I spoke yesterday of the provisions under the Unfair Practice Provisions touching upon guarantees against advances and protection No. (h) prohibits making guarantees against advance or protection against decline in prices. This provision has far-reaching effect upon the price policies of all members of the industry. One of its purposes is to eliminate commitments that will result in giving preference to customers in case the schedule of prices existing at the time such commitments were made should be changed. Such commitments, usually made to the larger commercial users, have always been an evil in the competitive markets. They will become intolerable under a code of fair practices that requires all purchasers of the same class to receive the same treatment under existing or a changed price schedule. Therefore, after the effective date of the Code, no commitments verbal, written, or otherwise, will be permitted that give any customers preferential treatment as to prices during the effective period of the current posted price schedule or that will prevent the price to any customer from being changed to that which will be made to all customers of the same class under a new or changed schedule.

Following the ruling given in the above paragraph, all quotations for fu-

ture acceptance should carry a provision to the effect that the prices quoted are subject to change to comply with schedules posted and in effect at the time the contemplated sales are to be completed.

Contracts Made Before Code Effective

It should be kept in mind that the Act can not modify or abrogate contracts executed prior to the effective date of the Code. Stay away from those commitments. And we suggest that in drawing your contracts, you carry a provision to the effect that the prices made in this contract are subject to such changes as may be ordered by any administrative agency of the Ice Code or of the Recovery Administration, or to comply with the policies of the Code and of the Recovery Act.

Now, then, we come to a question that has been somewhat troublesome in our minds, but it need not be so much so, that of contracts. I think we can probably save some time in sketching hastily through the Yellow Book on this.

On and after the effective date of the Ice Code, all contracts entered into for the sale of ice must be made in compliance with the provisions of the Code and of the Act. The provisions that bear upon the relationship of seller and purchaser of ice are new provisions of law that will modify or be read into all contracts for the sale and purchase of ice. It is therefore at once apparent that evasion of the purposes and requirements of the Code and of the Act are not to be permitted through contracts any more so than they are through the sales to the general trade. Should evasions be permitted by written contract, they would have to be permitted by verbal contract. The ordinary sale and delivery of ice is in the nature of a verbal contract. Therefore, exceptions permitted because they are carried in written contracts would lay the predicate for the defeat of the whole purpose of the Code and of the Act.

Discourage Formal Contracts

As no price or other advantage is permitted to be extended by the seller or gained by the purchaser of ice through contracts, the Code Authority discourages the use of formal contracts. It recognizes, however, that sales to Government agencies are often required to be made by contract, and that in such cases contracts cannot be avoided. It also recognizes the practical considerations that make advisable contracts of greater or less duration with railroads and with shippers of perishables. It is conceded also that contracts are necessary and possibly advisable covering sales over a period of time to certain other civic or business institutions. All of these contracts are either recognized by law or they are made advisable because of the necessity that the seller make preparation for their fulfillment, often extending into investments of many thousands of dollars. For the most part, contracts of the nature described are made for long terms and the great majority of them now in existence will extend for several years.

We have those in mind, of course, as a practical matter, car icing and those contracts that call for investments, frequently covering long periods of time. These, of course, are perfectly legitimate, advisable, necessary, and the Code does not have the least intention of interfering with such contracts. What the Code Authority is doing here is discouraging the use of contracts on every hand, contracts with drug stores and contracts with restaurants and whatnot. Stay away from them. They are not in line with the policy of the Code and you mustn't find yourself tied up with contracts that you have made after the effective date of this Code that tie you down or that will leave you in this position, that you have changed your schedule to all the customers other than your contract customers and therefore are discriminating in your prices.

Now, the long-term contracts for car icing and whatnot will in the future, future contracts will be made on terms and prices that have been filed and posted, and posted by not later than the effective date of the contract. These contracts that are mostly made in your offices, the Code Authority has used rather an arbitrary ruling there that contracts extending over a period in excess of one year, contracts of the nature we are talking about, these railroad, governmental, and other contracts of that nature, the Code will be complied with when they are posted in the offices where those transactions are usually carried on rather than out on the platforms and around on delivery equipment. That was an arbitrary ruling by the Code Authority. That was thought advisable; it has been made, it has been approved by the Administrator, and it is sound.

Contracts for a shorter term, that are changing hands every season or oftener, the prices reflected in those contracts must be posted on the plant platforms or in some prominent place in and about the plant from which the service is rendered.

Code Does Not Nullify Certain Contracts

Now, contracts that were executed and all rights under them fixed prior to the effective date of the Code, do not have to be filed or posted. There is no point to it; it is a fixed transaction; the Code cannot nullify those contracts. If they are honest contracts, legal, they were legal when they were made and they cannot be abrogated by a law and a Code established subsequent to the date of their making. The nearest that we can get to adjustments of those situations is that under the direction of the President, all of the codes—and the provision is carried in ours—carry the suggestion that where imposition upon the seller is worked because of increasing costs under NRA in carrying out the contract, that the purchaser is urged to submit the matter to arbitration for readjustment of prices. But he cannot be compelled to do so.

Questions and Answers

MR. MUCKERMANN—Colonel, a new price schedule filed becomes effective 15 days from the date of mailing or from its receipt in Washington?

COL. WEATHERRED—Fifteen days from the date of mailing.

Now, gentlemen, I have some written requests here. Let me run through these:

QUESTION—Must all prices to peddlers be the same where they are served from the same platform, regardless of the distance they have to haul before peddling?

—The answer to that is yes. That question has been asked a number of times. Because a man has to haul his ice out into the country is no ground for you to discriminate as between him and the peddlers who haul their ice and distribute it in the town. That is his cost, it is not yours, and it must be reflected in his price to his purchasers. Now, you can establish a distant point of sale in the country to deliver that ice to him if you wish, but you must deliver it and you must bear the expense, and you can't go into some kind of a subterfuge by which you are paying him to deliver ice for you to himself somewhere out in the country. Any other ruling you can readily see would simply mean you would not have any fixed peddler price.

How far should a man haul ice before you begin to give him a rebate? Now, you are going to run into some difficulties; there is going to be some overlapping territory; there are going to be some competitive situations that you and your Committees of Arbitration and Appeal are going to have to work out, and you should understand that. But from your points of delivery within the same market, you must have the same price to peddlers taking the same amount of ice.

Our time is becoming quite short; the Chairman calls my attention to the fact that there is only 35 minutes left within which to treat these questions and talk of control of production; so we are going to move right along, because we have some things to say under this Control of Production clause that you may be interested in hearing.

QUESTION—May I ask whether a plant that has stations, whether refrigerated or not, can sell at the same price at those stations as it does at the platform, irrespective of the distance he hauls it?

COL. WEATHERRED—If it is within the same market, within the same competitive or trade territory, yes.

Control of Production Clause

Now, then, gentlemen, I am going to take these questions that you have here and turn to the Control of Production clause and run through that and then, if we have time, we will come back to those other questions. We regret that we have to cut the discussion a bit short. Still, I think that the Chairman has done very well indeed to have as long a talker as I am on this program handle as much of this stuff as I have and be closing as nearly on time as he is doing.

Control of Production comes under Article XI. This article has two phases. One is that which requires that before a new installation is made, a certificate of convenience and necessity must be secured from the Administrator. The other is that the plants that were not in actual operation on September 8, 1933, which was the date of the open hearing on the Ice Code, must secure prices not lower than the lowest published price schedule in the market—all plants that were not in operation on September 8, except those that were part of an organization, closed down for economical reasons or that had been temporarily closed for repairs.

Now, the basis for the restriction of that second requirement is that your plant should be required to establish at least a 12 months' cost record, cost experience in the market, before it is permitted to cut the prices of the other competitors in the market.

Now, Major Paddock says this Control of Production provision is dynamite. We are having quite a lot to do with it, of course; we know we would when we wrote it in here. But it is a necessary provision; it is in line with the policy of the Act and the very purposes of the Act are declared to be to utilize to the greatest possible extent existing manufacturing facilities. It is within the purview of the Act and the President was acting within the powers given him under the Act when he approved our Code, the Textile Code, and possibly some others that carry the Control of Production clauses. It is not under the licensing provision of the Act at all but it is under the general powers that are given the President to carry out and make effective Title I of this Act, a part of which is to utilize to the greatest possible extent the present production facilities and, of course, to give industry a breathing spell, to give it a chance to work out before handicapping it further with additional surpluses, especially industries that are so burdened with surplus production as is the ice industry. It doesn't mean that there will be no more ice plants built. It simply means that during the period of this emergency, no more plants will be built until the ones wishing to build them shall have been able to show to the satisfaction of the Administration that the public necessity and convenience demands or will be served by the building of such plants.

Increase in Production

The same thing is true, of course, for increase of production and storage facilities.

Now, then, the procedure on that situation generally is that the burden of proof is upon the one making the application to show by a pre-

ponderance of evidence that the public necessity and convenience will be served by the building of this plant.

The government has looked into this situation in the ice industry. It has found it to be a greatly over-produced industry. It has found that the continuous influx of new plants will defeat the NRA program so far as the ice industry is concerned, or greatly handicap it, and, therefore, it is declared as a matter of policy that the one who wishes to build a new plant in any territory must show that that territory needs that plant. And he must show it by positive evidence. And, of course, it is the part of any interest that may be opposing him to show by contrary evidence that the plant is not needed.

Now, to give you some idea of what we are thinking about in connection with this Control of Production matter, and also some idea probably of procedure in other lines under our Committees of Arbitration and before our Committee of Arbitration and Appeal and on up to the Code Authority, I am going to sketch through a short study that I made here at the request of Mount Taylor as a guide in handling these cases.

Procedure in Control of Production

First, the Committee of Arbitration and Appeal takes up the case when it receives from the applicant direct, or from the Administrator, the Code Authority, or the Regional Advisor, an application for a certificate of convenience and necessity that someone has made; or it receives a protest that a plant or facilities are being installed in contravention of the Code. The Chairman of the Committee, or the Secretary, should immediately secure information from all reasonably available sources upon which to make up a list of all parties directly interested in the matter, including,—and this list should include:

(a) Ice manufacturing companies whose ice is sold in the market in which the installation is proposed to be made.

(b) Persons making or proposing to make the installation.

(c) One or more city or civic officials or others who may fairly be considered as representing the public.

(d) Administrative or compliance officials within or without the ice industry acquainted with the facts as to the compliance records of both proponents and opponents; what has been the record of the proponents and of the opponents as to compliance with this Code. If it is a new man coming in, what is his record? What can we expect of him concerning this Code? And not only that, but what is the record of the fellows who are in the market who are opposing him? Have they been playing the game with the government?

Now, third, he makes a decision, this Chairman of the Committee, as to whether the matter will be brought before a general hearing of the whole Committee or whether some one of the Committee, or someone else will be designated to gather the facts and report back. He issues a notice to all these parties very similar to the one that Burton Davis showed us here this morning, or suggested, that on a certain date, at a certain time, a hearing will be held on this matter. And the purpose of the hearing is to develop and make of record the facts upon which the Committee will base its findings and recommendations as to the action that should be taken on this matter under Article XI, Control of Production of the Code of Fair Competition of the Ice Industry. Each person to whom this notice is addressed is requested to submit to the Committee, in person at the hearing or by mail to arrive on a date before the hearing, a written statement of such facts as may be known to any such party as he may desire to submit to the Committee. And my thought there is that the notice should carry a list of the facts that should be, showing the character of the facts that should be produced, and I read it to you because I want to show you what facts are going to control this decision up there in Washington as to whether or not this fellow is going to be permitted to go ahead and build this plant.

Facts Desired

We want the facts developed as to who the parties are and what are their interests in connection with this construction. The name of the party proposing to make the installation. Whether it is an individual, a partnership, or a corporation; and bank references.

We want information as to the exact location of the proposed plant or installation; tons of daily capacity, or storage; general description of machinery and the process he is to use; names of parties to contracts pending or executed covering purchases of machinery, equipment, or real estate; and the dates of those executed contracts; copies of those executed contracts; and, where the question is involved, as to whether they were executed prior to th effective date of the Control Provisions of our Code.

A statement by the proponents of the character of distributing operation that they will use.

A definite description of the territory into which ice is to be sold from the proposed installation, giving population, distances from plant, location, all channels into which ice is to be sold.

Proponents should show the price schedule they propose to use.

The total amount of ice sold in the territory during the previous calendar year; the greatest number of tons sold per day during any seven days of the previous calendar year; the sales in tons during the year, by classes; and all the pertinent facts relative to the market and to the ice consumption in the market, including the total sales during a period of two or more years. We consider it an important item, that comparison there of the existing capacity in the plant with the total consumption in the market for a period of a week or several days during the hottest part of the year.

The names of ice manufacturing or producing corporations whose ice is being sold in the described territory; location of plants and storage, distances; and such other facts as may be pertinent to the question that will be before the Administrator to determine whether or not the public convenience and necessity will be served by this installation.

Another set of facts that I failed to read here is that reflecting the character of distributing operations that are being used in the market now, the prices at which ice is being sold in the market.

Effective Date of Contracts

Now, under this Control of Production Provision, there have been a lot of discussions as to the effective date and as to where we are with contracts that are completed or partly completed.

Generally speaking, we can say this, that contracts that were in good faith completed, and enforceable contracts, with interests vested firmly, without subterfuge, before the effective date of the Control of Production provisions of the Code cannot be disturbed by the Code. But many of these contracts, as a matter of fact, are mere options. There has been a lot of bad faith shot through these transactions; and as they come before us, don't think we are not going to dig in, as Major Paddock told you about,—and Mount Taylor and I knew what cases he was talking about.

Now, the question came up the other day, a fellow said, "Well, I already had my lot, I had bought my lot prior to the effective date of the Code."

Well, now, the mere possession of a lot upon which a man may intend to build an ice plant sometime doesn't mean that he should be permitted to go ahead and build a plant after the effective date of the Code. It might have been in his family for 100 years, or it might have been bought by him 20 days before the effective date of the Code. The fact that he had possession of that lot is a fact to be taken into consideration, but by no means a controlling fact.

Now, just when these interests become vested and when a contract, in the face of these Control of Production provisions, is not a contract, is a question that we have to decide as each group of facts is brought up. But don't forget that we are going to go into the intent of this thing; and I can say to you right now that these contracts that sometime or other a plant will be built in a market and the thing is all drawn up beautifully on the machinery company's forms and all of that, just biding the time that, sometime or other, the fellow may decide he wants to build that plant, and he pulls this contract,—that is not going to go. That is an option, pure and simple, and there is nobody bound by it.

Now, another set of facts and another case. On September the 8th, somebody said, "Well, what is the effective date?"

Let's go back there a minute. I am kind of falling over myself in this discussion a little, because I do want to get these points over before the Chairman calls time; and we do want to and we must quit on time. Now, there has been a lot of discussion about what is the effective date of the Code. So far as the Control of Production provisions are concerned, the "effective date" is not used in the Provisions themselves, so, as I told you yesterday morning, I am very much inclined, and I think I will be supported in saying literally that October 3 and not October 16 is the effective date of the Control of Production provisions of the Ice Code.

"Rushing" Contracts

I am going to say something else to you. Get this picture. Here is a fellow who hears that there is going to be a Control of Production clause carried into the Ice Code. The open hearing was held on September 8, at which every man in the ice industry in America was given at least constructive notice that this provision would probably be carried in the Code. Now, then, he and those who wished to sell him machinery immediately fall to, framing up a lot of contracts to "beat the gun" for a plant that is to be built after the effective date of the policy that the government has declared to be in effect, by which the government says that it is against the governmental policy, against public policy, for any more ice plants to be built during the remaining 18 months of this emergency, except upon a certificate of necessity and convenience.

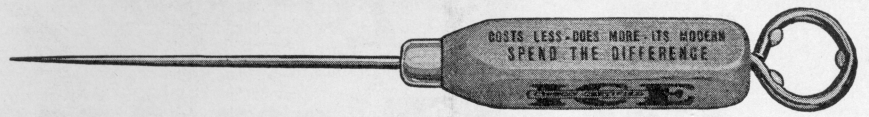
Now, then, you cannot just give a rule-of-thumb answer to those facts, but I want to call your attention to this, that when the question comes before the Code authority or before the court, inquiry is going to be made into that kind of a transaction to determine the good faith of those parties, and a serious question of public policy is involved. Is a contract made with an idea to defeat a solemn declaration of purpose by the government not a contract contrary to public policy and therefore void, regardless of the fact that a certain date may be set as the effective date, the formal effective date of the policy that is involved.

So, now, there is another case, another situation. Don't be too meticulous about these dates and about these transactions and whether or not these contracts are apparently closed so far as these Control of Production cases are concerned. Let the Committees of Arbitration and Appeal get together the facts, all the facts in the cases, and hand them out according to the suggestions that I have made here rather hastily, and let us have the facts on up the line and see what we can do about them.

(Continued on page 32)

VIVIAN ADVERTISING ICE PICKS

Here's the Point



Here's the Opener

The quality and workmanship of Vivian Ice Picks cannot be excelled. Natural Finish and Colors.

VIVIAN MANUFACTURING CO. : : : : ST. LOUIS, MO.

manager and Miss Nannie Kate Wolfe, secretary and treasurer. The old company was recently sold at a trustee's sale and was bought by the members of the new corporation.

Nashville—The Borden Southern Company of Nashville has opened a cream station at Petersburg, Tenn.

Nashville—Edward T. Noel, 47, president of the Noel Ice & Cold Storage Company, and prominent in the industry, died recently at his residence, after an illness of several months.

Woodbury—The local ice plant has been purchased by John A. Harris and Fred Adams and will be operated by the new purchasers.

TEXAS

Beaumont—Beaumont Brewing Company, incorporated with capital stock of $100,000. Incorporators are Steve Manteris, E. C. Brooks and Michael Manteris.

Booker—City applied for $30,000 loan for light, power and ice plant.

Corpus Christi—Schartz Brewing Company, authorized capital stock 7,880 shares without par value, has been incorporated by Robert Easterling, Annie Laurie Easterling and Andrew Robison.

Corpus Christi—Plans for the erection of a $1,000,000 stock yard and packing plant here have been submitted to the Commissioner of the Bank of Cooperation by a recently organized group of cattle men. Under the plan, the packing plant would either be operated by the group or leased to a large packer. It is believed that a saving of $10 per carcass could be effected by the institution of the plan.

Ft. Worth—Home Ice Co., with capital stock of $40,000, incorporated by Guy Price, Hugh Evans and acquired and plan to operate the plant of the Ballard-Martin Ice Co., West Lancaster Avenue, after overhauling machinery.

Houston—The Beer Distributors Association has been chartered by J. F. Montague, J. W. Link, Jr., and W. H. Wayse.

McAllen—It is understood applications for $25,000 with which to build a city abattoir, or slaughter house, has been approved by the Texas Board at Ft. Worth.

Nacogdoches—There is agitation for the construction of a municipally owned abattoir here.

San Antonio—The Salinas Brewing Co. has been incorporated beer with authorized capital stock of $300,000. Incorporators are Karl Haegerlin, Joseph Haegerlin and C. A. Haegerlin.

San Antonio—Blue Bennett Breweries, incorporated with capital stock of 50,000 shares without par value. C. N. Noble, J. E. Kieschnick and E. J. Braswell are incorporators.

San Antonio—Merchants Ice & Cold Storage Co., incorporated with authorized capital stock of $140,000. J. W. Goods, Mrs. Eugene Nolte and Mrs. Walter Nolte are the incorporators.

Tomball—City has applied for $34,000 loan for ice plant.

VIRGINIA

Big Stone Gap—The Pet Dairy Products Company, subsidiary of the Pet Dairy Products Company of St. Louis has leased the pasteurizing plant and distribution system of the Big Stone Dairies here.

Norfolk—Big Four Sausage Company, Inc., has been chartered to manufacture sausage and handle meat products.

Winchester—The Zeropack Company, of Ohio has been chartered here to deal in frozen fruits and vegetables.

Winchester—The National Brewing & Distilling Co., incorporated with $250,000 capital by John Shine and M. E. Magee. Construction of brewery is planned.

WEST VIRGINIA

Logan—The Serv-Ice & Storage Company, operators of ice plants at Logan and Madison have acquired the plant of the Man Ice & Supply Company of Man, for a consideration of $8,750.

Thursday's Session

(*Continued from page 26*)

Now, there are any number of variations of troubles under this Control of Production provision. We could spend the entire day and the rest of the week here discussing cases. One Control of Production case, its analysis, its handling, its hearing and all that, may run over a period of several days' study; so we couldn't be expected to give offhand answers here. But— and I think you have the general picture—in all cases we will look at the spirit of the thing, we will look at what is the purpose of it. Remember that this provision is for the emergency only; it has 18 months more to run; it is in line with the policy that the government has followed all along. You can see the complete pattern, that these surpluses must be controlled; they must not be added to. It is the same policy as the plowing up of cotton or the agreement upon the part of the wheat farmer that during the period of the emergency he will reduce his acreage. It is part of the policy of the New Deal, to give industry a chance to catch up.

Now, we have every sympathy in the world with the machinery people, we are not fighting them; but they on this occasion must have sympathy with us. The ice industry has made their existence possible and now its existence, under present conditions, is possible only under this Code. We are calling upon them to cooperate with us, and the government is saying they must, in this program during this period of emergency.

On the other hand, with this provision in the Code, there should be a great stimulation towards the improvement of properties, towards their rehabilitation, towards plant economies, the replacement of worn out machinery, all of which is not only permitted but encouraged, as a matter of policy, on the part of the government.

And the provision is fair. Practically, we know what happens when a new plant comes into the market, ordinarily. If not needed—and they haven't been for some time, as a rule—they don't bring anything to the market except just more ice where there is already too much ice. They never result in a reduction of prices except for the temporary price war that usually follows, and then everybody gets together and puts them back where they were before, or maybe a little bit higher to help pay for the new plant. They add not a thing in the world to the economic structure; there is no public benefit involved. The only person who is served, as a rule,—I am speaking generally; there are exceptions, of course; but the only person who is served as a rule is the profit that the fellow makes,—I started to say in chiseling his way;—I don't mean that, I mean edging his way into the market. He has his plant and he finally gets in and makes a little profit, as do the machinery people who sell him the machinery. But as far as the public is concerned, or the industry as a whole, nobody benefits. The ice is good, but between the best ice and the poorest ice in the market there is not five cents a hundred difference in the ice to the customer.

Now, with that condition confronting us, the government says this industry must be protected against a further increase in these surpluses, and we propose to do the protecting; and that is the provision and the policy that the Major was talking about a while ago when he said it was dynamite. He meant by that: Let's do our part; let's get the facts; let's play fair. If we do that, then the government will play fair with us and support this provision.

So far as the provision itself is concerned, that is a legal matter and I think it will stand just as well as any other of the provisions of the Code, and I think they will all stand as part of this emergency legislation.

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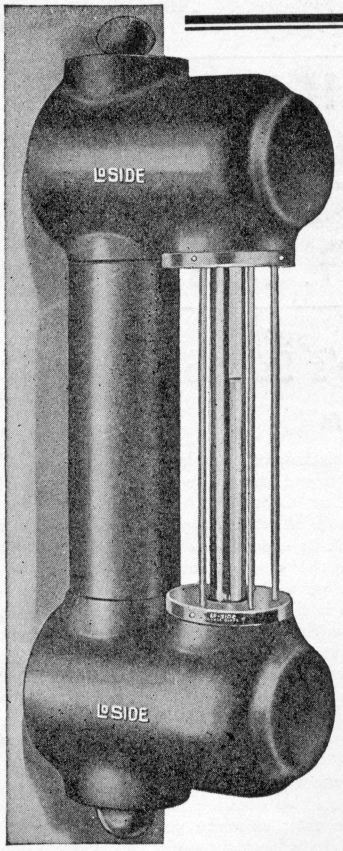

LO-SIDE
ASSEMBLY AT WORK
Gauge Glass Patented
Bubble-Trap Connections Patented
Assembly Patented

LO-SIDE
(Reg. U.S. Pat. Off.)

Gauge Glass Assemb

Shows Cold Ammonia Liquic Through Clear Glass

A Liquid Level exists in any Evaporating System which is capable of first-class Efficiency; i. e., where the Liquid loses its vapor and starts to recirculate.

Any Steam Boiler is an example.

A LIQUID AMMONIA LEVEL exists in

1. SHELL AND TUBE COOLERS.
2. ACCUMULATORS which recirculate Liquid through short-run Coils or other Evaporators.
3. LIQUID COOLERS.

LO-SIDE **Assembly shows the Liquid at its Lev**

As does a Gauge Glass on a Steam Boiler.

LO-SIDE **Assembly shows at a glance what is to be done to operate the Evaporating System with highest Efficiency and *always* with Safety; to keep all Evaporating surface flooded, all Liquid away from the Machine. At all loads — steady, varying; from no load to full load.**

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LO-SIDE **Assembly gives usefulness ent in kind and degree from that of Valves controlled by Float, Press Temperature. These aid the oper *the doing;***

LO-SIDE **Assembly shows him *what done*—at all times—to get Efficie get SAFETY.**

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There is no Substitute for *LO-SIDE* Gauge Glass Assembly

Just as there is no Substitute for a Gauge Glass on a Steam Boiler.

In Commercial Ice and Cold Storage Plants, ***LO-SIDE*** Assembly is at work in many States:

from 1 to more than 7 in a Plant,
from 1 to more than 27 for an Owner.

Many, specified by Owners and Consulting Engineers; most, specified and installed, *and all but a few were supplied* by Manufacturers of Refrigerating Apparatus.

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And of all of these,

No User has found fault with *LO-SIDE* Assembly.

Any Manufacturer of appropriate Refrigerating Apparatus can furnish informati quote price installed in approved manner.

LO-SIDE GAUGE GLASS ASSEMBLY, complete, is packed for express shipment to weigh 50 l

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